

SOLAR POWER SUBSCRIPTION AGREEMENT

THIS SOLAR POWER SUBSCRIPTION AGREEMENT (this “**Agreement**”) is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“**City**,” or “**the City**”) and **McKinstry RDCS 1, LLC** a Washington limited liability company doing business at 5005 3rd Ave S, Seattle, WA 98134 (the “**Company**”), each a “**Party**” and collectively the “**Parties**.”

WITNESSETH:

WHEREAS, the City has entered into an Operator Agreement with the Company dated November 31, 2021 (“**Operator Agreement**”) to construct, operate, maintain, and manage subscriptions for community solar gardens on property owned and leased by the City.

WHEREAS, pursuant to the Operator Agreement, the Company will construct, operate, maintain, and manage subscriptions for as applicable, community solar gardens owned by the City with a total generating capacity rated at approximately 4,569 kWdc (the “**Solar Gardens**”) as shown in **EXHIBIT C**;

WHEREAS, the City, through its Department of General Services/Department of Aviation, desires to subscribe to a portion of the energy generated by the Solar Gardens;

WHEREAS, the Parties intend that, pursuant to Colo. PUC No. 8 Electric Tariff (“**Tariff**”) and the Producer Agreements, the Solar Gardens will generate Bill Credits to be applied to the City’s monthly invoices from Utility for retail electric service for City Meters;

WHEREAS, the City desires to purchase from the Company the right to receive Bill Credits associated with at least 38.3% of the Energy Output generated by the Solar Gardens (“**City’s Allocated Percentage**”) by each of the Solar Gardens shown in **EXHIBIT C**, except for the Solar Garden that is designated for 100% low income qualified subscriptions, commencing on the Commercial Operation Date of each Solar Garden and continuing through the Term, as provided under the terms of this Agreement, for the City’s facilities and for the benefit of the general public. At the Company’s sole discretion and in compliance with Utility program requirements, the City’s Allocated Percentage may be increased up to a maximum of 40% of each Solar Garden’s Energy Output as needed to allow the Bill Credits from the Solar Gardens to be allocated to the fullest extent possible;

WHEREAS, Colorado law allows the City to purchase an allocated share of Bill Credits associated with the solar energy produced from the Solar Gardens and attribute City’s share of solar energy to one or more of its metered sites. C.R.S. § 40-2-127; 4 CCR 723-3 §§ 3875–3883;

NOW, THEREFORE, in consideration of the promises and the mutual benefits from the covenants hereinafter set forth, the Company and the City agree as follows:

1. LINE OF AUTHORITY: The City’s Executive Director of General Services/Chief Executive Officer of Aviation, his designee or his successor in function (hereinafter referred to as the “Executive Director”) authorizes and directs all work performed under this Agreement. Until otherwise notified by the Executive Director, the City’s Energy Manager is designated as the

authorized representative of the Executive Director through whom Sites access and Sites management shall be directed and coordinated. Administrative reports, memoranda, correspondence and other submittals required of the Company shall be processed in accordance with the Executive Director's directions.

2. DEFINITIONS:

A. "Bankruptcy Event" means, with respect to a Party, that either: (i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or (ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding up or the composition or readjustment of debts, or (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

B. "Bill Credit" means the monetary value of the electricity generated by the Solar Gardens commensurate with the City's Allocated Percentage, as calculated pursuant to the Producer Agreements and the Tariff, and credited to the City by Utility on its monthly invoice for electric service for City Meters.

C. "City Meter" means the meter(s) associated with specific City Utility accounts/premises listed in **EXHIBIT B** as updated from time to time by the Parties.

D. "Commercial Operation" means the condition existing when the Company has achieved all of the requirements for commercial operation as set forth in Section 4.3 of the Producer Agreements.

E. "Commercial Operation Date" means the date when Commercial Operation is achieved. For the avoidance of doubt the Commercial Operation Date shall be the same as that under the Producer Agreements.

F. "Energy Output" means the quantity of actual net energy generated by the Solar Gardens (measured in kWhac by the production meter) in any given period of time. Energy Output does not include the RECs.

G. "Force Majeure" has the meaning given to it in Section 27.

H. "kWhac" means kilowatt-hour alternating current of electricity.

I. “**Producer Agreement**” means the certain Solar*Rewards Community Producer Agreements between Utility and Company attached hereto as **EXHIBIT A**.

J. “**PUC**” means the Public Utilities Commission of Colorado.

K. “**Renewable Energy Credits**” or “**RECs**” shall have the meaning set forth in 4 CCR 723-3 § 3652(y). In addition “**REC**” shall also mean the right to all non-energy and environmental attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the capacity available and/or energy generated by a Solar Garden, including environmental air quality credits, tags and allowances created by law or regulation by virtue of the Solar Garden’s environmentally favorable or renewable characteristics or attributes. “**RECs**” includes but is not limited to rights eligible for registration, trading and/or use under the Western Renewable Energy Generation Information System. A “**REC**” or “**RECs**” excludes any Tax Incentive.

L. “**Site**” means the real property listed in **EXHIBIT C** on which a Solar Garden will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the System.

M. “**System**” means an individual Solar Garden.

N. “**Tax Incentives**” means any and all new or existing federal, state or local tax credits, cash grants, production incentives or similar tax or cash benefits for which the City or the Solar Gardens is eligible or which either receives, or any depreciation, expenses, credits, benefits or other federal, state or local tax treatment for which the City or the Solar Gardens is eligible or that either receives.

O. “**Transfer Date**” means the date upon which this Agreement is assigned to an eligible transferee.

P. “**Utility**” means Public Service Company of Colorado doing business as Xcel Energy.

3. INSTALLATION AND OPERATION OF SOLAR GARDENS:

A. The Company shall install the Solar Gardens, which, upon the Commercial Operation Date, are targeted to have a combined generating capacity rating as shown in **EXHIBIT C**. The Company shall provide the City with reasonable notice of the progress of the installation of the Solar Gardens and shall provide reasonable notice to the City of the Commercial Operation Dates.

B. The Company, per its obligations under the Operator Agreement, shall be solely responsible for all costs and the performance of all tasks required for installation of the Solar Garden, which shall include, without limitation, the following:

- (i) obtain all permits and enter into contracts and agreements required for installation of the Solar Gardens;
- (ii) obtain all necessary authority from Utility or regulatory entities for the operation of Solar Gardens; and
- (iii) effect the execution of all agreements required for Utility interconnection of the Solar Gardens.

C. The Company shall: (i) use commercially reasonable efforts to cause installation of the Solar Gardens to be completed and to cause the Commercial Operation Dates to be on or before July 12, 2023; or (ii) on such date, notify the City of the actual or estimated Commercial Operation Dates. Successful completion of parts (i) - (iii) of Section 3.B shall be conditions precedent to the Company's obligations to commission and operate the Solar Gardens and otherwise perform its obligations under this Agreement. If the activities contemplated in parts (i) - (iii) of Section 3.B are not completed by July 12, 2023, either Party shall have the option, upon written notice to the other Party, to terminate the Agreement. Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement to revise the Commercial Operation Dates and the Term of this Agreement.

D. The Company shall be solely responsible for operation and maintenance of the Solar Gardens in compliance with all laws, regulations, and governmental entities, and shall, at all times during the term of this Agreement, maintain the Solar Gardens in good operating condition.

E. The Company shall provide all insurance coverage required by this Agreement between the Parties.

F. The Company shall enter into Producer Agreements with Utility under which the Company and Utility take the following actions in the implementation of the solar garden program:

- (i) The Company is responsible for operating each Solar Garden so that it produces solar energy; for delivering and selling the solar energy and the associated Renewable Energy Credits to Utility; and for providing Utility with monthly information that identifies subscribers to each Solar Garden such as the City, and each subscriber's allocated percentage of each Solar Garden's Energy Output.
- (ii) Utility is responsible for accepting deliveries of each Solar Garden's Energy Output; for paying the Company for the RECs associated with the Energy Output from each Solar Garden; and for providing each subscriber to each Solar Garden with a Bill Credit on its retail electric service bill associated with its allocated percentage of each Solar Garden's Energy Output.

G. The Parties acknowledge that the Producer Agreements require that the Company is responsible for answering all questions from the City regarding its participation in the Solar Gardens. The Company is solely responsible for resolving disputes with the Utility or the City regarding the accuracy of City's Allocated Percentage. Notwithstanding the foregoing, the City

acknowledges that the Utility is responsible for resolving disputes with the City regarding the applicable rate used to determine the Bill Credit.

H. The Parties share a common desire to generate favorable publicity regarding the Solar Gardens and their association with it. The Parties agree that they will, from time to time, issue press releases regarding the Solar Gardens and that they shall cooperate with each other in connection with the issuance of such press releases. Each Party agrees that it shall not issue any press release regarding the Solar Gardens without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

4. PURCHASE AND SALE OF POWER:

A. Purchase and Sale. Beginning on a Solar Garden's Commercial Operation Date, and continuing for the Term of this Agreement, the City shall purchase from the Company at the Purchase Price the right to receive Bill Credits from the Utility proportional to City's Allocated Percentage of each Solar Garden's Energy Output.

B. Purchase Price. On a monthly basis during the Term, the City shall pay the Company an amount equal to City's Allocated Percentage of the Energy Output during the applicable production month multiplied by the price per kWhac in effect during the year in which the production month occurs, as shown on the price list on **EXHIBIT E** (the "**Purchase Price**"). Such amount shall be paid in accordance with the terms of Section 6.

C. The Utility shall install a Production Meter to measure the amount of Electric Power generated by each Solar Garden. The Production Meter shall be used to measure the amount of Electric Power generated by the System and City's Allocated Percentage.

5. TERM: The term of the Agreement shall commence upon signature by all required signatories and shall expire twenty (20) years from the latest Commercial Operation Date (the "**Term**") of the Solar Gardens associated with the Agreement as shown in **EXHIBIT C** for which the City is purchasing Bill Credits, unless earlier terminated in accordance with the provisions of this Agreement. This Term may be extended by mutual agreement of the Parties through a written amendment, the terms of which shall be agreed to no later than one hundred eighty (180) days prior to the expiration of the Agreement.

6. PAYMENT OBLIGATIONS:

A. Any other provision of this Agreement notwithstanding, in no event shall the City's payment obligation for the Agreement be any amount in excess of **SIX MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$6,500,000.00)** over the Term (the "**Maximum Contract Amount**"), unless this Agreement is amended to increase such amount.

B. The City's obligation to make payments to the Company shall only extend to monies appropriated by the Denver City Council, paid into the City Treasury, and encumbered for the purposes of this Agreement.

C. The Company shall deliver to the City monthly invoices, no later than thirty (30) days after the last day of the production month, stating the amount equal to City's Allocated Percentage of each Solar Garden's Energy Output for the production month in kWhac. The invoice shall be in form satisfactory to the City. The Parties agree that the Executive Director and the Chief Financial Officer of the Department of Finance may from time to time change the format and content of the monthly invoice to be submitted by the Company. The City is authorized to make payments to the Company's agent on the Company's behalf, so long as the Company provides the City with evidence of the Company's contractual relationship with its agent for invoicing services.

D. Payment of the City's Purchase Price may be made by automated funds transfer in immediately available funds to the account designated by the Company from time to time.

E. The City shall process all invoices for payment received from the Company on a timely basis in accordance with the City's Prompt Payment Ordinance, Section 20-107, *et seq.* of the Denver Revised Municipal Code ("DRMC"). The Company agrees that interest and late fees shall be payable by the City hereunder only to the extent authorized and provided for in the City's Prompt Payment Ordinance.

F. If Utility has not accepted all or part of City's Allocated Percentage of a Solar Garden's Energy Output or has not provided the City with a Bill Credit for all or part of the City's Allocated Percentage on the City's retail electric service bill, the City agrees to pay the undisputed portion when due and provide the Company with notice of the invoice discrepancy. The City will not be responsible for the Purchase Price for the Bill Credits in question until Utility has provided them to the City.

G. Either Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered or adjust any invoice for any arithmetic, computational or meter-related error within six (6) months of the date the invoice or adjustment to an invoice was rendered. In the event a Party disputes all or a portion of an invoice, or any other claim or adjustment arises, that Party shall pay the undisputed portion when due and provide the other Party notice of the dispute and the amount in dispute. In such event, the Parties shall first use good faith, reasonable, diligent efforts to resolve such dispute within a reasonable period of time not to exceed thirty (30) days from the date of such notice. If the Parties do not resolve such a dispute within such thirty (30) days, then such dispute, or any other disputes arising under or related to this Agreement, shall be resolved by administrative hearing, which shall be conducted in accordance with the procedures set forth in DRMC §56-106(b), *et seq.* The Parties hereto agree that the Executive Director of General Services' determination resulting from said administrative hearing shall be final, subject only to the Parties' right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

7. **RECS AND TAX INCENTIVES**: The City acknowledges that Utility will acquire from the Company under the Producer Agreements all energy generated by the Solar Gardens and all RECs associated with the Solar Gardens. The City shall not make any statement contrary to Utility's ownership of the RECs, including but not limited to any public claim of renewable, green or environmental benefits associated with City's Allocated Percentage.

8. REPRESENTATIONS:

A. Each Party represents to the other Party that (a) such Party is duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; (b) the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized by all necessary corporate or other actions; (c) this Agreement is a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law); and (d) neither the execution and delivery of this Agreement by such Party nor compliance by such Party with any of the terms and provisions of this Agreement conflicts with, breaches or contravenes the provisions of such Party's organizational documents or any state statutes as applies to such Party.

B. Specific Representations of the City. As of the date of this Agreement the City represents to the Company that:

- (i) The City is the sole party in interest agreeing to purchase City's Allocated Percentage and is acquiring City's Allocated Percentage for its own account and not with a view to the resale or other distribution of the City's Allocated Percentage, in whole or in part, and agrees that it will not transfer, sell or otherwise dispose of City's Allocated Percentage except as provided herein. The City has been given the opportunity to ask questions of, and receive answers from, the Company concerning the terms and conditions of this Agreement and other matters pertaining to this Agreement. The City has been given the opportunity to obtain additional information necessary in order for the City to evaluate the merits and risks of the purchase of City's Allocated Percentage.
- (ii) The City's Allocated Percentage, combined with any other distributed resources serving the City Meters, represents no more than 120% of the City's average annual consumption at the City Meters over the last twenty-four (24) months; and
- (iii) The City is a retail electric service customer of the Utility.

C. Exclusion of Warranties. This Agreement includes no guaranteed production or warranty as to the performance or operation of the Solar Gardens.

9. COLORADO GOVERNMENTAL IMMUNITY ACT: In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

10. INSURANCE:

A. General Conditions. Company agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Company shall keep the required insurance coverage in force at all times during the Term of the Agreement, or any extension thereof, during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in Section 25 of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums, for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Company shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in Section 25 by certified mail, return receipt requested, within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by Company. Company shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the City. Company shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

B. Proof of Insurance. Company shall provide a copy of this Agreement to its insurance agent or broker. Company may not commence services or work relating to the Agreement prior to placement of coverage. Company certifies that the certificate of insurance attached as **EXHIBIT F**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the certificate of insurance. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Company’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City may require additional proof of insurance, including but not limited to policies and endorsements.

C. Additional Insureds. For Commercial General Liability and Auto Liability, Company and its subcontractor’s insurer(s) shall list the City, and its elected and appointed officials, employees and volunteers, as additional insured.

D. Waiver of Subrogation. For all coverages, Company’s insurer shall waive subrogation rights against the City.

E. Subcontractors and Sub-Consultants. All subcontractors and sub-consultants (including independent power providers, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Company as appropriate to their respective primary

business risks considering the nature and scope of services provided. Company shall ensure that all such subcontractors and sub-consultants maintain the required coverages. Company agrees to provide proof of insurance for all such subcontractors and sub-consultants upon request by the City.

F. Workers' Compensation/Employer's Liability Insurance: Company shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Company expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Company's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall affect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Company executes this Agreement.

G. Commercial General Liability. Company shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

H. Business Automobile Liability: Company shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

I. Additional Provisions.

- (i) For Commercial General Liability, the policy must provide the following:
 - (a) That this Agreement is an insured contract under the policy;
 - (b) That defense costs are in excess of policy limits;
 - (c) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
 - (d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- (ii) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the Company, whichever is earlier.
- (iii) Company shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, Company

will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

11. DEFENSE AND INDEMNIFICATION:

A. Company hereby agrees to defend, indemnify, reimburse and hold harmless the City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“**Claims**”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City for any acts or omissions of the Company or its subcontractors either passive or active, irrespective of fault, including the City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

B. The Company’s duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City, regardless of whether claimant has filed suit on the Claim. The Company’s duty to defend and indemnify the City shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City’s negligence or willful misconduct was the sole cause of claimant’s damages.

C. The Company will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims, including but not limited to court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City’s exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Company under the terms of this indemnification obligation. The Company shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

12. TAXES, CHARGES, AND PENALTIES: The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City’s Prompt Payment Ordinance DRMC § 20-107, et seq. Company shall promptly pay when due all taxes, bills, debts and obligations it incurs performing the services under the Agreement.

13. CONFLICT OF INTEREST:

A. No employee, officer, board member, or official of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the Company shall not hire, or contract for services with, any employee or officer, of the City that would be in violation the City's Code of Ethics, DRMC § 2-51, *et seq.* or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

B. The Company shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Company represents that it has disclosed any and all current conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Company by placing the Company's own interests, or the interests of any party with whom the Company has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the Company written notice describing the conflict, and thirty (30) days to cure such conflict.

14. DISPUTES: The Parties shall first use good faith, reasonable, diligent efforts to resolve any dispute within a reasonable period of time not to exceed thirty (30) days from the date of such notice of such dispute, which shall be in writing. Except for invoice-related disputes, which shall be governed by Section 6.G of the Agreement, all other disputes between the Company and the City regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by DRMC § 56-106(b), *et seq.* For the purposes of that procedure, the City official rendering a final determination shall be the Executive Director.

15. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under the Agreement, the Company may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Company shall insert the foregoing provision in all subcontracts.

16. COMPLIANCE WITH ALL LAWS: Company shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

17. LOSS: If any portion of a Solar Garden (i) is materially damaged or destroyed, or suffers any other material loss, or (ii) is condemned, confiscated or otherwise taken, in whole or in material part by, or the use thereof is otherwise diminished so as to render impracticable or unreasonable the continued production of energy; then to the extent there are sufficient insurance or condemnation proceeds available to the Company, the Company shall either cause (a) the Solar Garden to be rebuilt and placed in Commercial Operation at the earliest practical date, or (b) another materially identical Solar Garden to be built and placed in Commercial Operation as

soon as commercially practicable, or (c) amend this Agreement to remove the System from the list of Solar Gardens from which the Subscriber is purchasing Bill Credits.

18. DEFAULTS AND REMEDIES:

A. Company Default. The following events are defaults with respect to the Company (each, a “**Company Default**”):

- (i) The Company admits in writing that a Bankruptcy Event has occurred with respect to the Company;
- (ii) The Company fails to pay the City any undisputed amount owed under the Agreement within ninety (90) days from receipt of notice from the City of such past due amount;
- (iii) The Company breaches any material term of this Agreement and (A) the Company fails to cure the breach within ninety (90) days after receipt of written notice from the City, or (B) the Company fails to commence and pursue a cure within a reasonable time if a period greater than ninety (90) days is necessary to cure the Company Default; or
- (iv) The Producer Agreement is terminated due to material breach by Company.

B. City Remedies. If a Company Default described in Section 18.A has occurred and continues for a period of one hundred eighty (180) consecutive days, in addition to other remedies expressly provided herein, the City may terminate the Agreement upon written notice to the Company and exercise any other remedy it may have at law or equity or under the Agreement. In the event of such termination, the City shall use reasonable efforts to mitigate its damages.

C. City Default. The following events shall be defaults with respect to the City (each, a “**City Default**”):

- (i) The City admits in writing that a Bankruptcy Event occurs with respect to the City; and
- (ii) The City breaches any material term of this Agreement and (A) the City fails to cure the breach within ninety (90) days after receipt of written notice from the Company of such breach, or (B) the City fails to commence and pursue said cure within a reasonable time if a period greater than ninety (90) days is necessary to cure a City Default.

D. Company’s Remedies. If a City Default described in Section 18.C has occurred and continues for a period of one hundred eighty (180) consecutive days, in addition to other remedies expressly provided herein, the Company may terminate this Agreement upon written notice to the City, sell City’s Allocated Percentage to one or more persons other than the City, recover from the City actual, reasonable and verifiable damages, and the Company may exercise

any other remedy it may have at law or equity or under this Agreement. In the event of such termination, the Company shall use reasonable efforts to mitigate its damages.

19. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

20. EXAMINATION OF RECORDS:

A. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Company's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Company shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. 20-276.

B. In addition to the foregoing, each Party hereto shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Each Party shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder. No request to examine records shall require a Party to make disclosures in violation of state or federal privacy or confidentiality laws.

21. TERMINATION:

A. Either Party has the right to terminate this Agreement in accordance with the early termination provisions set forth in Section 3.C and the default provisions set forth in Section 18.

B. Either Party may terminate the Agreement if the other Party or any of such Party's officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft,

racketeering, extortion or any offense of a similar nature in connection with such Party's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

C. Company Termination.

- (i) Termination for Loss. The Company may terminate this Agreement in accordance with Section 17.

D. City Termination.

- (i) Termination Prior to Commercial Operation Date. If the following event or circumstance occurs before the Commercial Operation Date, the City may terminate the Agreement immediately upon written notice, in which case neither Party will have any liability to the other except for any liabilities that accrued before termination:
 - (a) Utility or another party with the authority to do so disqualifies the Company from participating in the Solar Gardens in a way that materially impacts Company's ability to perform under this Agreement.
- (ii) Termination for Convenience. The City may terminate this Agreement for convenience upon sixty (60) days' prior written notice to the Company.

22. ASSIGNMENT:

A. Assignment by the Company.

The Company shall not assign this Agreement without the prior written consent of the City, provided, however, that the City shall not unreasonably withhold, condition or delay its consent. The Company shall provide the City with such information concerning the proposed transferee (including any person or entity liable for the performance of the terms and conditions of this Agreement) as may be reasonably required to ascertain whether the conditions upon the City's approval to such proposed assignment have been met. The Company acknowledges that the City may be unable to pay invoices directly to an assignee until a formal amendment has been executed acknowledging the assignment, and in such case, the City shall continue to pay invoices to the Company until the City is able to pay the assignee directly. City shall use commercially reasonable efforts to effectuate and expedite such assignment. Where the Company assigns the entirety of its obligations under this Agreement, the Company shall have no further liability to the City or any third party in connection with such assignment; for the avoidance of doubt, the Company shall have no liability to the City or any third party for any liability, damages, cause of action, or other claim of any type, related to performance, conduct, action, inaction, or activities by any assignee; and the City shall have no claim against the Company by reason of, or arising out of, incidental to, or relating to, matters arising after assignment.

B. Assignment by the City.

- (i) The City shall not assign this Agreement or any interest herein without the prior written consent of the Company; provided, however, that the Company shall not unreasonably withhold, condition or delay its consent.
- (ii) The City does not need the Company's consent to change the City Meters for the same amount of subscription as long as all the City Meters are owned by the City and meet the requirements of the community solar garden program. For such change, the City will notify the Company in writing and the Company will inform Utility as necessary of the change as soon as practicable.
- (iii) The City's request for the Company's consent to any proposed assignment as contemplated in Section 22.B(i) must be in writing and provided to the Company at least thirty (30) days before the proposed effective date of such change or assignment, which request must include: (i) the City's name and mailing address; (ii) the current City Meter(s); (iii) the assignee's meters; (iv) the name and contact information for the individual or entity to whom the City is requesting to assign this Agreement (if applicable) and the consideration (if any) proposed to be provided to the City for such assignment; and (v) the proposed effective date of such proposed change or assignment. In the case of any assignment of this Agreement in whole or in part to another individual or entity; (a) such assignee's meters shall be located within Utility's service territory; (b) such assignee shall have a comparable credit rating to that of the assigning the City; (c) such assignee is eligible to receive Bill Credits from the Solar Gardens pursuant to the Tariff and rules governing community solar; (d) such assignee shall make substantially the same representations and warranties as included in Section 8 of this Agreement at the time of the Transfer Date; (e) such assignee shall execute a new Solar*Rewards Community Subscriber Agency Agreement, Consent to Disclose Utility Data (attached as **EXHIBITS G and H**) and any other documentation reasonably necessary to give effect to the assignment of this Agreement substantially in the same form as this Agreement; and (f) the value of any consideration to be provided to the City for assignment of this Agreement may not exceed the aggregate amount of Bill Credits that have accrued to the City but have not yet been applied to the City's monthly invoice(s) from Utility.

C. The City and the Company agree that any assignment of this Agreement is not intended as the offer or sale of a security, and the City and all assignees hereof understand and agree that: (A) the City shall not be responsible for any information provided to any assignee or subassignee in connection with any such assignment and (B) if any such assignment constitutes the offering of a security under applicable security laws, the City shall not be responsible for compliance with any such laws, and any offering or other disclosure document delivered by the City in connection with such assignment shall include a statement to the effect that the City has

assumed no responsibility for such document and has neither reviewed nor undertaken to verify any information contained therein.

23. NO THIRD PARTY BENEFICIARIES: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Company and the City, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the Company and the City that any person other than the Company or the City receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

24. INDEPENDENT CONTRACTOR: Company shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon the City. Nothing in this Agreement shall be construed to mean or imply that the Company is a partner, joint venturer, agent or representative of the City. Neither Party shall represent to others that one Party is a partner, joint venturer, agent or representative of, or otherwise associated with, the other Party with respect to the rights and obligations set forth in this Agreement. Company lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the DRMC.

25. NOTICES: All notices required to be given to the Company or the City hereunder shall be in writing and sent by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or delivered personally to:

Company: General Counsel
 McKinstry
 5005 3rd Avenue S.
 Seattle, WA 98134

City: Executive Director of Office of Climate Action,
 Sustainability, and Resiliency or Designee
 201 W Colfax Avenue, Dept. 708
 Denver, Colorado 80202

With copies to: Executive Director of General Services
 c/o Utilities Division
 201 West Colfax, Dept. 1106
 Denver, Colorado 80202

 Denver City Attorney's Office
 Municipal Operations Section
 201 West Colfax, Dept. 1207
 Denver, Colorado 80202

Either Party hereto may designate in writing from time to time the address of substitute or supplementary persons to receive such notices. The effective date of service of any such notice shall be three (3) days after the date such notice is mailed to the City or the Company.

26. FINAL APPROVAL: This Agreement is expressly subject to and shall not be or become effective or binding on either Party until it is approved by Denver's City Council and fully executed by all signatories hereto, including all signatories of the City and County of Denver.

27. SET-OFF: Except as otherwise set forth herein, each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement or arising out of any other contractual arrangements between the Parties. All outstanding obligations to make, and rights to receive, payment under this Agreement may be offset against each other.

28. FORCE MAJEURE: No Party will be considered in breach or default of its obligations in the event of delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence (each such event, a "Force Majeure Event"). Force Majeure Events shall include, without limitation, natural disasters, acts of the public enemy, agents of the federal government, fires, floods, epidemics, pandemics, quarantine restrictions and unusually severe weather. In the event of the occurrence of any such delay, the time or times for performance of any of the obligations of the Party whose performance is affected by the Force Majeure (the "Affected Party") will be extended for the period of the delay, provided that such delay could not have been avoided by the exercise of due diligence, the Affected Party has exhausted all reasonable means of performing its obligations including implementing alternative means of performance, and the Affected Party has taken reasonable steps to mitigate or prevent further delay. The Affected Party shall promptly notify the other Party of the cause or causes of the Force Majeure Event and shall continue to exercise reasonable commercial efforts to overcome such Force Majeure.

29. BINDING EFFECT: The terms and provisions of this Agreement, and the respective rights and obligations hereunder of each Party, shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

30. AMENDMENTS: The Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of either Party at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind such Party.

31. OTHER AGREEMENTS: This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes any other prior agreements, written or oral, between the Parties concerning such subject matter.

32. SEVERABILITY: Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and non-appealable order of any court or regulatory body having

jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions shall remain in full force and effect as if this Agreement had been executed without the invalid portion.

33. SURVIVAL: Any provision of this Agreement that expressly or by implication comes into or remains in full force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

34. COUNTERPARTS. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

35. LEGAL EFFECT OF CONTRACT:

A. The Parties acknowledge and agree that the transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

B. The Parties acknowledge and agree that, for accounting or tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract with respect to the sale to the City of electric energy produced at an alternative energy facility.

36. COOPERATION: Upon the receipt of a written request from the other Party and without further consideration, each Party shall provide materials, information, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section. Without limiting the foregoing, the Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required.

37. WAIVER: The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein. All waivers must be in writing signed by the waiving Party.

38. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Company consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

List of Exhibits:

EXHIBIT A: Producer Agreements

EXHIBIT B: City Meters

EXHIBIT C: Description of the Solar Gardens

EXHIBIT D: Estimated Annual Energy Output

EXHIBIT E: Purchase Price

EXHIBIT F: Insurance ACORD Certificate

EXHIBIT G: SRC Subscriber Agency Agreements

EXHIBIT H: Utility Data Consent Form

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SIGNATURE PAGE

Subscriber

See Attached Signature Page

Signature

Printed Name

Title

Date

Company

DocuSigned by:

Heath Mackay

Signature

Heath Mackay

Printed Name

Director

Title

Date

Contract Control Number: CASR-202266138-00
Contractor Name: MCKINSTRY ESSENTION, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver


By:

By:

By:

Contract Control Number:
Contractor Name:

CASR-202266138-00
MCKINSTRY ESSENTION, LLC

By:  _____
ADBFCD92EBD94A2...

Name: Heath Mackay
(please print)

Title: Director
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A: Producer Agreements

The Parties understand and agree that these Producer Agreement may need to be amended prior to each of the Solar Gardens achieving Commercial Operation due to changes in the final System design or project location. If one or more Producer Agreements are amended, the Company shall notify DEN and provide such updated Producer Agreements prior to a System achieving Commercial Operation.



Solar Garden ID No. **SRC083126**

Solar*Rewards Community Producer Agreement
Solar*Rewards Community Photovoltaic (PV) Systems
For SRC Producers

This Agreement is made and entered into this 15 day of April, 2022, by and between Public Service Company of Colorado, d/b/a/ Xcel Energy (“Public Service” or “Company”), a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202, and **McKinstry RDCS 1, LLC** (“SRC Producer”), a **Washington Limited Liability Company** whose business address is **5005 3RD AVE S, SEATTLE, WA, 98134-2423**, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS:

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.25 below) with respect to the Photovoltaic Energy and associated Renewable Energy Credits (“RECs”) generated by the community solar garden photovoltaic solar system (the “PV System”) installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (AC) nameplate capacity of 456 kW. The PV System Owner (as defined in Section 1.15 below) has separately provided assurances to Public Service that SRC Producer has the power and authority to enter into this Agreement and perform its obligations hereunder, and that PV System Owner will promptly inform Public Service if SRC Producer no longer has such power and authority (and the identity of any assignee), which assurances are a material inducement to Public Service entering into this Agreement with SRC Producer.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

- 1.1 “Applicable Law” shall have the meaning set forth in Section 9.1 of this Agreement.
- 1.2 “Commission” shall mean the Public Utilities Commission of the State of Colorado.

1.3 “Commonly Owned” shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.4 “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.5 “Deposit” shall mean a security deposit in an amount equal to \$100/kW of the PV System’s Direct Current (DC) nameplate capacity.

1.6 “Electric Tariffs” shall mean Public Service’s electric tariffs as in effect and on file with the Commission from time to time.

1.7 “Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Solar Garden Site will not be available or usable for the purposes contemplated by this Agreement, and/or (iii) will preclude or interfere with SRC Producer’s ability to perform its obligations under this Agreement as and when due.

1.8 “Force Majeure” shall have the meaning set forth in Section 6.1 of this Agreement.

1.9 “Hazardous Material” means any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed or identified under, or which may form the basis for liability under Applicable Law, or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; per- and poly-fluoroalkyl substances; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing materials; medical waste; solid waste, and any excavated soil, debris, or groundwater that is contaminated with such materials.

1.10 “House Power” shall mean the supply of retail power for consumption at the Solar Garden Site.

1.11 “Interconnection Agreement” shall mean the separate agreement to be entered into between PV System Owner and Public Service providing the terms and conditions by which PV System Owner may interconnect and operate the PV System in parallel with Public Service’s electric distribution system at the Solar Garden Site.

1.12 “Monthly Subscription Information” shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.7 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber’s identifying information, and the SRC Allocation applicable to each such SRC Subscriber’s Subscription, reflecting each SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.13 “Photovoltaic Energy” shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.14 “Post-Bid Requirements” shall have the meaning set forth in the RFP.

1.15 “Production Meter” shall mean the measuring facility installed by Public Service pursuant to Section 5.2 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy and the associated RECs change possession from SRC Producer to Public Service.

1.16 “Production Month” shall mean the calendar month during which Photovoltaic Energy and associated RECs are produced by the PV System and delivered to Public Service at the Production Meter.

1.17 “PV System” shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy and associated RECs subject to this Agreement.

1.18 “PV System Owner” shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System.

1.19 “PVWATTS” shall mean the National Renewable Energy Laboratory’s PVWATTS Calculator, or any successor product or service.

1.20 “Renewable Energy Credit” or “REC” shall have the meaning set forth in 4 CCR 723-3-3652. In addition REC shall also mean the right to all non-energy and environmental attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the capacity available and/or energy generated by the PV system, including environmental air quality credits, tags and allowances created by law or regulation by virtue of the PV system’s environmentally favorable or renewable characteristics or attributes. “RECs” includes but is not limited to rights eligible for registration, trading and/or use under the Western Renewable Energy Generation Information System (“WREGIS”).

For the avoidance of doubt, a “REC” excludes (i) any local, state or federal production tax credit, depreciation deductions or other tax credits providing a tax benefit to SRC Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, including the investment tax credit expected to be available to SRC Producer or the owner of the PV System with respect to the PV System under Internal Revenue Code Section 48 (Energy Credits); (ii) any direct governmental grant or payment inuring to the benefit of SRC Producer or

the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, pursuant to Section 1603 of the American Recovery and Reinvestment Act, or other federal or state legislation; and (iii) depreciation and other tax benefits arising from ownership or operation of the PV System unrelated to its status as a generator of renewable or environmentally clean energy.

1.21 “RFP” shall mean the Public Service request for proposal regarding the purchase of Photovoltaic Energy and associated RECs from Community Solar Gardens that SRC Producer responded to with its SRC Bid.

1.22 “Rural” shall mean an area classified as “rural” by the United States Census Bureau as of the date of execution of this Agreement.

1.23 “Solar Garden Site” shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement, which may be updated by the mutual agreement of the Parties from time to time.

1.24 “Solar*Rewards Community Application and Subscriber Management System” or “SRC Application System” is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service’s Solar*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber’s allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$500 for each user that logs into to the SRC Application and Subscriber Management System. This number is subject to change in future contract cycles with the software platform vender. Checks should be made out to “Public Service Company of Colorado” and must be submitted with the SRC Producer Agreement.

1.25 “SRC Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber’s Subscription reflecting such SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.7 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.26 “SRC Application” shall have the meaning set forth in the RFP.

1.27 “SRC Bid” shall mean SRC Producer’s bid for the sale of Photovoltaic Energy and associated RECs from the PV System in response to the RFP.

1.28 “SRC Credit” shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber’s retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service’s Electric Tariffs.

1.29 “SRC Subscriber” shall mean the retail electric service customer of Public Service who: (a) owns a beneficial share of the Photovoltaic Energy and associated RECs produced by the PV System pursuant to a Subscription; (b) has attributed such Subscription to one or more premises served by Public Service where it is the customer of record; and (c) has entered into a SRC Subscriber Agency Agreement with SRC Producer.

1.30 “SRC Subscriber Agency Agreement” shall mean an agreement entered into between each SRC Subscriber and SRC Producer, in a form substantially the same as the SRC Subscriber Agency Agreement attached hereto as Exhibit B, by and through which each SRC Subscriber has authorized SRC Producer to act as SRC Subscriber’s agent for purposes of this Agreement, including, among other things, to sell SRC Subscriber’s beneficial share of Photovoltaic Energy and associated RECs generated by the PV System to Public Service.

1.31 “Subscription” shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

1.32 “Substantial Completion” shall mean the date that all construction and installation of the PV System is completed, and the PV System is ready to be commissioned at the full-agreed upon generation capacity, including, but not limited to, a set transformer, meter set request, and the SRC Producer having requested a scheduled witness test for the PV System.

1.33 “Urban” shall mean an area classified as “urban” by the United States Census Bureau as of the date of execution of this Agreement.

ARTICLE II TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS

2.1 Sale and Delivery of Subscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy and associated RECs produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System. Notwithstanding anything to the contrary, Public Service’s payment obligation set forth in Section 2.3, if applicable, and the SRC Credits (as an indirect inducement of SRC Subscribers to obtain Subscriptions from SRC Producer) are SRC Producer’s sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are attributable to Subscriptions.

2.2 SRC Credits.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy and associated RECs produced by the PV System shall be the full responsibility of the SRC Producer.

2.3 Positive Price and Payments to SRC Producer for Photovoltaic Energy and Associated RECs. The price to be paid by Public Service for the purchase of the Photovoltaic Energy and the associated RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. If the price to be paid is positive, as set forth in the SRC Bid, Public Service shall pay SRC Producer the price of \$ 48.61 per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Payments for such purchases shall be made monthly by check to SRC Producer for the Photovoltaic Energy and the associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.4 Negative Price and Option for One-Time Payment to Public Service for Photovoltaic Energy and Associated RECs. If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, Public Service and the SRC Producer may agree that the SRC Producer may make a one-time payment to Public Service of \$ N/A. Such payment shall be made by check to Public Service issued within thirty (30) days after the Date of Commercial Operation.

2.5 Negative Price and Payment(s) to Public Service. The price to be paid by SRC Producer to Public Service for acceptance of RECs shall be expressed in dollars per megawatt-hour (MWh). If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, SRC Producer shall pay Public Service the price of \$ N/A per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Unless otherwise paid in accordance with Section 2.4, payments shall be made by check to Public Service by SRC

Producer and shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.6 Purchase and Sale of Unsubscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy and associated RECs purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy and associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading. Notwithstanding anything to the contrary, Public Service's payment obligation set forth in this Section 2.6 is SRC Producer's sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are not attributable to Subscriptions.

2.7 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all RECs associated with such Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances.

2.8 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

ARTICLE III **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer warrants and covenants from and after the Date of Commercial Operation to Public Service as follows:

(a) SRC Producer will be either the PV System Owner or a subscriber organization organized under Section 40-2-127, C.R.S., duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.

(b) SRC Producer will be duly authorized to sell and deliver to Public Service Photovoltaic Energy and associated RECs produced by the PV System on behalf of all SRC Subscribers who then have valid Subscriptions in the PV System.

(c) SRC Producer will have the right and authority to sell the unsubscribed Photovoltaic Energy and associated RECs produced by the PV System to Public Service.

(d) SRC Producer will at all times have a designated primary application manager or other authorized representative, and such individual will have authority to act on behalf of SRC Producer (and Public Service will be entitled to rely on such individual's authority) for all actions contemplated by this Agreement, including payment direction to return the Deposit or escrowed funds under Sections 4.4 and 4.5.

(e) PV System Owner has authorized SRC Producer (which authorization has not been revoked, terminated or limited in any respect) to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions.
SRC Producer covenants and warrants during the Term as follows:

(a) No SRC Subscriber will, at any time following the Date of Commercial Operation, own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy and associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) SRC Producer shall ensure that each Subscription is sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises; provided that the minimum one kW sizing requirement herein will not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber will be a premise served by Public Service and will be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) Unless otherwise expressly agreed by Public Service in writing, SRC Producer shall allocate Subscriptions to the classes or categories of Subscribers set forth on Exhibit D, including, if applicable, Eligible Low-Income CSG Subscribers or residential rate class service customers (R, RE-TOU, RD, or RD-TDR), in the percentages of the SRC Allocation as set forth on Exhibit D (each percentage, a "Subscriber Mix Commitment"), and SRC Producer shall cause each such Subscriber Mix Commitment to be at least as great as the corresponding commitment set forth in the SRC Bid. If, at any time, SRC Producer fails to meet or exceed any Subscriber Mix Commitment, SRC Producer will only be entitled to payment at the unsubscribed energy and REC rate set forth in Section 2.6 for that portion of the SRC Allocation set aside or dedicated for the applicable Subscriber Mix Commitment that fails to meet such Subscriber Mix Commitment.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed will not be the generation of electricity for retail or wholesale sale.

In addition to any other rights and remedies set forth herein, (i) Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of SRC Producer's preceding requirements set forth in this Section 3.3 and (ii) if an SRC Allocation for any SRC Subscriber or Subscription no longer complies with the preceding requirements set forth in this Section 3.3 as determined in Public Service's discretion, then Public Service may treat such SRC Allocation as unsubscribed unless and until such all such requirements have been met with respect to such SRC Subscriber and such Subscription.

3.4 Requirements and Restrictions Applicable to the PV System. SRC Producer further covenants and warrants during the Term as follows:

(a) Following the Date of Commercial Operation, the PV System will have at least ten SRC Subscribers.

(b) The PV System will have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System will be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If the PV System is or will no longer be located within Public Service's existing service territory, then Public Service may terminate this Agreement, which termination

will be effective on the date of Public Service's written notice of such termination, or, if later, the date that the PV System is no longer located within Public Service's service territory.

(d) The location of CSGs will not result in more than 2 MWs of Commonly Owned total capacity of CSGs energized within a 0.5 mile distance as measured from point of interconnection to point of interconnection for Rural CSGs. In Urban areas the distance between points of interconnection between Commonly Owned CSGs will be maintained at 0.5 miles; however, the capacity allowed within this distance will be increased to 4.0 MW. Furthermore, each awarded CSG must be contained on its own legal parcel of land.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System will be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

In addition to any other rights and remedies set forth herein, Public Service may refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during any period that SRC Producer is not in compliance with the preceding requirements set forth in this Section 3.4.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be solely responsible for ensuring and shall ensure that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

ARTICLE IV

TERM, COMMERCIAL OPERATION AND PERFORMANCE

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, or expiration to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination or expiration and, as applicable, to provide for final billings and adjustments related to the period prior to termination or expiration, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

4.2 Project Development. Prior to the Date of Commercial Operation, SRC Producer agrees to (i) submit regular progress reports (and not fewer than semi-annually) to Company

including current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Date of Commercial Operation; (ii) provide copies of reports submitted to the PV System Lender relating to status, progress and development of the project, (iii) upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep the Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained. Upon request, the Company shall have the right to monitor the construction, start-up, testing, and operation of the PV System at the Solar Garden Site for compliance with this Agreement, the SRC Bid, the SRC Application, and the Post-Bid Requirements, *provided, however, that* Company shall comply with all of SRC Producer's reasonable and applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the PV System is authorized to operate by Public Service; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within ninety (90) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as the required Deposit in connection with its SRC Application; less any amounts deducted in accordance with Section 5.1. Notwithstanding the foregoing, if this Agreement is terminated for any reason other than Public Service's failure to perform or observe any material term or provision of this Agreement, then the Deposit shall become non-refundable and forfeited by SRC Producer to the Renewable Energy Standard Adjustment account.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3882(d) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3882, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged, destroyed or is otherwise out of operation, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy and associated RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to (a) the estimated annual generation of the PV System, as determined via PVWATTS, after applying an annual cell degradation factor of one percent (1%) each year (compounded) after the first year, multiplied by (b) the number of years or partial years remaining in the Term as of the effective date of such termination, and further multiplied by (c) the positive difference resulting, if any, by subtracting (i) the price per MWh to be paid (expressed as a negative number if SRC Producer is paying Public Service) for the Photovoltaic Energy and the associated RECs set forth in Sections 2.3 through 2.5, as applicable, from (ii) the weighted-average price per MWh for Photovoltaic Energy and associated RECs of the awarded bids under Public Service's most recent request for proposal under its Solar*Rewards Community Service program. In no event will the foregoing calculation be deemed to obligate Public Service to make any payment to SRC Producer. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that (i) the liquidated damages set forth herein are not a penalty and (ii) that Public Service's actual damages in the event of an SRC Producer default under this Section 4.6 would be difficult to ascertain and that the liquidated damages set forth herein adequately represent the Parties' best estimate of such damages.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy and associated RECs produced and delivered during such Production Month to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine

the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (*e.g.*, account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Review of Low-Income Qualification. The SRC Producer shall assist Public Service with verifying that any eligible low-income CSG subscriber, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, meets the requirements set forth in 4 CCR 723-3-3652(o). Assistance may include but is not limited to providing any documentation of low-income status as defined above or providing any contact information for the verifying agency or organization.

4.9 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. If the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. If the SRC Subscriber to which such SRC Allocation is attributable no longer meets the qualification of low income as defined under 4 CCR 723-3-3652(o) in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. Furthermore, until the remedy has occurred the SRC Producer will be paid at the rate described in Section 2.6 of this Agreement for any energy producer that is attributable to the applicable SRC Allocation.

4.10 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.11 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.12 No Relocation. Upon Commercial Operation, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.13 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.14 Request for Information. Until the Date of Commercial Operation, SRC Producer shall promptly provide (and no later than 10 days following the date of any request) Public Service with any and all information and documentation reasonably requested by Public Service regarding the current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, including, without limitation, any significant developments or delays along with an action plan for making up such delays and SRC Producer's best estimate of the date of Substantial Completion.

4.15 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

ARTICLE V

PRODUCTION METER AND INTERCONNECTION

5.1 Construction Timelines. The SRC Producer will have 24 months to bring the PV System to Substantial Completion from the date of notice that the SRC Bid was a winning bid (the "Target Completion Date"). If the PV System has not achieved Substantial Completion by the Target Completion Date, the Deposit will be forfeited to the Renewable Energy Standard Adjustment account in an amount equal to 1/180th of the Deposit per day for each day following the Target Completion Date that the PV System has not been brought to Substantial Completion, not to exceed the Deposit. If the PV System has not been brought to Substantial Completion after 30 months, Public Service will consider the PV System incomplete and have the right to remove it from the Solar*Rewards Community program with any associated capacity forfeited and terminate this Agreement which will be effective upon written notice to SRC Producer of such termination.

5.2 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and

read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.3 Telecommunications Equipment. SRC Producer shall cause to be provided, and shall own, operate and maintain at the SRC Producer's sole cost any necessary electronic communications equipment or devices that are required to provide Public Service real-time access to 15-minute interval data regarding the Photovoltaic Energy produced by the PV System. Unless otherwise notified in writing by Public Service that an alternative telecommunication device is acceptable, such equipment shall include an active, wired telephone or data line capable of transmitting the monthly 15-minute interval data to Public Service. Public Service reserves the right to replace the telecommunication equipment at its sole cost.

5.4 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.3 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. SRC Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.5 Interconnection Agreement. The Parties recognize that PV System Owner and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rules 3850 through 3859 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3850, *et. seq.*, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated August 6, 2020, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, (a) nothing in the Interconnection Agreement shall alter or modify SRC

Producer's or Public Service's rights, duties and obligations under this Agreement and (b) this Agreement may be terminated by Public Service in its sole discretion upon the termination of the Interconnection Agreement which will be effective upon written notice to SRC Producer of such termination. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.6 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.6. SRC Producer's right to self-generate hereunder shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

ARTICLE VI

FORCE MAJEURE

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC

Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy and associated RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend

such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the SRC Producer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

ARTICLE VII
DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Events of Default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below (an “Event of Default”):

(A) A breach by either Party of its material covenants or warranties set forth in this Agreement, that is not excused by Force Majeure, and such breach remaining unremedied for 30 Days after notice thereof having been given by the non-defaulting Party.

(B) Any representation or warranty made by SRC Producer in this Agreement, the SRC Bid, the SRC Application, or the Post-Bid Requirements, including without limitation representations or warranties regarding any characteristics or specifications of the PV System or any Subscriber Mix Commitment, being false or misleading in any material respect when made, or ceasing to remain materially true during the Term of this Agreement.

7.2 Prior to commencing any action to enforce this Agreement, the non-defaulting Party shall provide written notice of default to the Party asserted to be in default and the Party asserted to be in default shall have a period of thirty (30) days following receipt of such written notice within which to cure the asserted default (or if the asserted default is of a nature which cannot reasonably be cured within such 30-day period, to commence and thereafter diligently pursue a cure thereof.)

7.3 Failure of either Party to assert an Event of Default or to enforce any term or condition of this Agreement shall not constitute a waiver of any other similar or other default, or waiver of such term or condition or of any other term or condition of this Agreement. Each Party hereby irrevocably and unconditionally waives any right to a trial by jury for the resolution of any dispute arising under this Agreement.

7.4 If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the prevailing Party in any action brought for the purpose of enforcing such provisions shall be entitled to recover its reasonable attorney fees, expenses and costs of such action from the non-prevailing Party.

7.5 Upon an uncured Event of Default, the non-defaulting Party may terminate this Agreement immediately upon notice to the other Party and pursue any other remedy available to it under this Agreement or under law or in equity.

ARTICLE VIII
LIABILITY AND INDEMNIFICATION

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the tax, financial or legal consequences, if any, to SRC Producer with respect to the installation of the PV System or the production and sale of Photovoltaic Energy and associated RECs, and SRC Producer is urged to seek professional advice regarding these issues.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates (collectively “Indemnified Parties”) harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature (“Losses”) that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer’s administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

8.3 Indemnification by SRC Producer: Environmental. SRC Producer shall indemnify, defend and hold the Indemnified Parties harmless from and against all Losses arising out of any claim alleging Environmental Contamination at the Solar Garden Site and/or illegal disposal of Hazardous Materials off-site, regardless of merit and regardless of SRC Producer’s responsibility therefor.

ARTICLE IX **LAWS AND REGULATORY BODIES**

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto (“Applicable Law”). Without limiting the generality of the foregoing and unless otherwise expressly stated to the contrary in the Colorado Revised Statutes or by an order or decision of the Commission or a rule promulgated by the Commission, the Parties acknowledge and agree that the rules set forth in 4 *Code of Colorado Regulations* 723-3-3665 (or any successor rule or rules of the Commission) and Public Service’s then current Renewable Energy Standard Compliance Plan, as approved by the Commission, as each of them exist as of the date of the RFP (the “Effective Time”) shall govern regardless of any changes, amendments, restatements, modifications, additions, or deletions of such rules or to such plan following the Effective Time.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over the PV System takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both Parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues

any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either Party (in that Party's reasonable good faith opinion), then the Party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other Party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other Party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other Party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that an electronic signature or a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld; provided, however, that Public Service may assign this Agreement to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the location of the PV System. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral

assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent to assignment, in form acceptable to Company, to any of SRC Producer's lenders requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy
Attn: Solar*Rewards Community
1800 Larimer St, 15th Floor
Denver, CO 80202
Fax: 1.800.252.4371

If to SRC Producer:

Jeff Hughes
McKinstry RDCS 1, LLC
4835 East Cactus Road, Ste 100
Scottsdale, AZ 85254

General Counsel
5005 3RD AVE S
SEATTLE, WA, 98134-2423

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, and the SRC Bid constitute the entire understanding and agreement between the Parties with respect to the PV System, and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto. In the event of any conflict or discrepancy between any information provided by SRC Producer in the SRC Bid and the corresponding information set forth herein, including without limitation any REC price, Subscriber Mix Commitment or Construction Milestone, the information in the SRC Bid shall control and shall be deemed to replace and supersede the corresponding information set forth herein, unless otherwise expressly agreed by Public Service in writing.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

SRC Producer

SRC Producer Name (printed): McKinstry RDCS 1, LLC

SRC Producer Representative: Jeff Hughes

Title: Director

Jeffrey Hughes

Digitally signed by Jeffrey Hughes
DN: C=US, E=jeffreyh@mcKinstry.com,
O="McKinstry", OU=0560, CN=Jeffrey Hughes
Reason: I agree to the terms defined by the
placement of my signature on this document
Date: 2022.04.15 08:51:51-0700

SRC Producer Signature: _____ Date: _____

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

By: **Lee Gabler** Digitally signed by Lee
Gabler
Date: 2022.04.28
Title: _____ 08:37:44 -06'00'

Date: _____.

**As authorized agent for
Public Service Company of Colorado**

Solar Garden ID No. **SRC083126**

Exhibit A
to
Solar*Rewards Community Producer Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

CCD-CSG7-Montbello Rec Ctr
SRC083126
15555 E 53rd Ave.
Denver, CO 80239

Exhibit B
to
Solar*Rewards Community Producer Agreement

**SRC SUBSCRIBER AGENCY AGREEMENT
FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)**

SRC Subscriber Name: _____

SRC Subscriber Retail Customer Account No.: _____

SRC Subscriber Service Address: _____

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: _____(Primary) _____(Alt.)

SRC Producer (Subscriber Organization) Name: _____

Solar Garden ID No: _____

Name and Location of Solar Garden: _____

SRC Subscriber’s Initial Subscription Share (in kilowatts, or “kW”): _____ kW

The undersigned SRC Subscriber hereby authorizes _____ (“SRC Producer”), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber’s agent for purposes of selling to Public Service Company of Colorado (“Public Service”) all of SRC Subscriber’s beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System (“PV System”) identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service’s Solar*Rewards Community Program and Rate Schedule SRC of Public Service’s electric tariff on file with the Colorado Public Utilities Commission (“Commission”) and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber’s information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber’s subsequent electric service bills as compensation for Public Service’s receipt of SRC Subscriber’s share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber’s electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber’s electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit

on any of SRC Subscriber’s electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber’s electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer’s execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber’s bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

1. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber’s agent with respect to SRC Subscriber’s beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber’s subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff.

2. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service’s receipt of notice that SRC Subscriber’s subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

4. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber’s knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

5. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed “Consent to Disclose Utility Customer Data” form granting consent for Public Service to share information regarding SRC Subscriber’s past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber’s eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the Xcel Energy website or the website of the Colorado Public Utilities Commission.

IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER

SRC PRODUCER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit C
to
Solar*Rewards Community Producer Agreement

Construction Milestones

DATE	RESULTS ACHIEVED
1	SRC Producer has submitted post bid information (10 subscribers, deposit/escrow, proposed site location, and low income subscriber summary).
2	The SRC Producer Agreement has been executed.
3	SRC Producer has received site acquisition/control.
4	Site Survey and soils report have been obtained.
5	SRC Producer has obtained all variance allowances and planning approval.
6	SRC Producer has obtained all required permits.
7	SRC Producer has achieved closing on financing for the PV System and the Solar Garden Site, if necessary, or has provided Public Service with proof of financial capability to construct the PV System.
8	SRC Producer and all required counterparties have executed major procurement contracts, the Construction Contract, and any operating agreements needed to commence construction of the PV System.
9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
10	The SRC Producer has started PV System construction.
11	SRC Producer has provided Public Service with copies of applicable inspection reports for the PV System.
12	SRC Producer has provided Public Service with evidence of complying with that insurance coverage required prior to the date of Substantial Completion.
13	SRC Producer shall have made the Interconnection of the CSG generating facility and is capable of being energized.
14	Substantial Completion has been achieved and the date duly recorded.

	15	All other SRC application documentation reasonably requested by Public Service is on file with Public Service.
	16	SRC Producer has Substantially Completed the PV System within 24 months of receiving an award.

Exhibit D
to
Solar*Rewards Community Producer Agreement
Subscriber Mix Commitment

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as Eligible Low-Income CSG Subscribers: 0 %

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as residential rate class service customers (R, RE-TOU, RD, or RD-TDR): 0 %

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Solar Garden ID No. **SRC083127**

Solar*Rewards Community Producer Agreement
Solar*Rewards Community Photovoltaic (PV) Systems
For SRC Producers

This Agreement is made and entered into this 15 day of April, 2022, by and between Public Service Company of Colorado, d/b/a/ Xcel Energy (“Public Service” or “Company”), a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202, and **McKinstry RDCS 1, LLC** (“SRC Producer”), a **Washington Limited Liability Company** whose business address is **5005 3RD AVE S, SEATTLE, WA, 98134-2423**, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS:

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.25 below) with respect to the Photovoltaic Energy and associated Renewable Energy Credits (“RECs”) generated by the community solar garden photovoltaic solar system (the “PV System”) installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (AC) nameplate capacity of 500 kW. The PV System Owner (as defined in Section 1.15 below) has separately provided assurances to Public Service that SRC Producer has the power and authority to enter into this Agreement and perform its obligations hereunder, and that PV System Owner will promptly inform Public Service if SRC Producer no longer has such power and authority (and the identity of any assignee), which assurances are a material inducement to Public Service entering into this Agreement with SRC Producer.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

- 1.1 “Applicable Law” shall have the meaning set forth in Section 9.1 of this Agreement.
- 1.2 “Commission” shall mean the Public Utilities Commission of the State of Colorado.

1.3 “Commonly Owned” shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.4 “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.5 “Deposit” shall mean a security deposit in an amount equal to \$100/kW of the PV System’s Direct Current (DC) nameplate capacity.

1.6 “Electric Tariffs” shall mean Public Service’s electric tariffs as in effect and on file with the Commission from time to time.

1.7 “Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Solar Garden Site will not be available or usable for the purposes contemplated by this Agreement, and/or (iii) will preclude or interfere with SRC Producer’s ability to perform its obligations under this Agreement as and when due.

1.8 “Force Majeure” shall have the meaning set forth in Section 6.1 of this Agreement.

1.9 “Hazardous Material” means any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed or identified under, or which may form the basis for liability under Applicable Law, or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; per- and poly-fluoroalkyl substances; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing materials; medical waste; solid waste, and any excavated soil, debris, or groundwater that is contaminated with such materials.

1.10 “House Power” shall mean the supply of retail power for consumption at the Solar Garden Site.

1.11 “Interconnection Agreement” shall mean the separate agreement to be entered into between PV System Owner and Public Service providing the terms and conditions by which PV System Owner may interconnect and operate the PV System in parallel with Public Service’s electric distribution system at the Solar Garden Site.

1.12 “Monthly Subscription Information” shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.7 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber’s identifying information, and the SRC Allocation applicable to each such SRC Subscriber’s Subscription, reflecting each SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.13 “Photovoltaic Energy” shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.14 “Post-Bid Requirements” shall have the meaning set forth in the RFP.

1.15 “Production Meter” shall mean the measuring facility installed by Public Service pursuant to Section 5.2 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy and the associated RECs change possession from SRC Producer to Public Service.

1.16 “Production Month” shall mean the calendar month during which Photovoltaic Energy and associated RECs are produced by the PV System and delivered to Public Service at the Production Meter.

1.17 “PV System” shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy and associated RECs subject to this Agreement.

1.18 “PV System Owner” shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System.

1.19 “PVWATTS” shall mean the National Renewable Energy Laboratory’s PVWATTS Calculator, or any successor product or service.

1.20 “Renewable Energy Credit” or “REC” shall have the meaning set forth in 4 CCR 723-3-3652. In addition REC shall also mean the right to all non-energy and environmental attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the capacity available and/or energy generated by the PV system, including environmental air quality credits, tags and allowances created by law or regulation by virtue of the PV system’s environmentally favorable or renewable characteristics or attributes. “RECs” includes but is not limited to rights eligible for registration, trading and/or use under the Western Renewable Energy Generation Information System (“WREGIS”).

For the avoidance of doubt, a “REC” excludes (i) any local, state or federal production tax credit, depreciation deductions or other tax credits providing a tax benefit to SRC Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, including the investment tax credit expected to be available to SRC Producer or the owner of the PV System with respect to the PV System under Internal Revenue Code Section 48 (Energy Credits); (ii) any direct governmental grant or payment inuring to the benefit of SRC Producer or

the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, pursuant to Section 1603 of the American Recovery and Reinvestment Act, or other federal or state legislation; and (iii) depreciation and other tax benefits arising from ownership or operation of the PV System unrelated to its status as a generator of renewable or environmentally clean energy.

1.21 “RFP” shall mean the Public Service request for proposal regarding the purchase of Photovoltaic Energy and associated RECs from Community Solar Gardens that SRC Producer responded to with its SRC Bid.

1.22 “Rural” shall mean an area classified as “rural” by the United States Census Bureau as of the date of execution of this Agreement.

1.23 “Solar Garden Site” shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement, which may be updated by the mutual agreement of the Parties from time to time.

1.24 “Solar*Rewards Community Application and Subscriber Management System” or “SRC Application System” is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service’s Solar*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber’s allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$500 for each user that logs into to the SRC Application and Subscriber Management System. This number is subject to change in future contract cycles with the software platform vender. Checks should be made out to “Public Service Company of Colorado” and must be submitted with the SRC Producer Agreement.

1.25 “SRC Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber’s Subscription reflecting such SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.7 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.26 “SRC Application” shall have the meaning set forth in the RFP.

1.27 “SRC Bid” shall mean SRC Producer’s bid for the sale of Photovoltaic Energy and associated RECs from the PV System in response to the RFP.

1.28 “SRC Credit” shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber’s retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service’s Electric Tariffs.

1.29 “SRC Subscriber” shall mean the retail electric service customer of Public Service who: (a) owns a beneficial share of the Photovoltaic Energy and associated RECs produced by the PV System pursuant to a Subscription; (b) has attributed such Subscription to one or more premises served by Public Service where it is the customer of record; and (c) has entered into a SRC Subscriber Agency Agreement with SRC Producer.

1.30 “SRC Subscriber Agency Agreement” shall mean an agreement entered into between each SRC Subscriber and SRC Producer, in a form substantially the same as the SRC Subscriber Agency Agreement attached hereto as Exhibit B, by and through which each SRC Subscriber has authorized SRC Producer to act as SRC Subscriber’s agent for purposes of this Agreement, including, among other things, to sell SRC Subscriber’s beneficial share of Photovoltaic Energy and associated RECs generated by the PV System to Public Service.

1.31 “Subscription” shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

1.32 “Substantial Completion” shall mean the date that all construction and installation of the PV System is completed, and the PV System is ready to be commissioned at the full-agreed upon generation capacity, including, but not limited to, a set transformer, meter set request, and the SRC Producer having requested a scheduled witness test for the PV System.

1.33 “Urban” shall mean an area classified as “urban” by the United States Census Bureau as of the date of execution of this Agreement.

ARTICLE II TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS

2.1 Sale and Delivery of Subscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy and associated RECs produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System. Notwithstanding anything to the contrary, Public Service’s payment obligation set forth in Section 2.3, if applicable, and the SRC Credits (as an indirect inducement of SRC Subscribers to obtain Subscriptions from SRC Producer) are SRC Producer’s sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are attributable to Subscriptions.

2.2 SRC Credits.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy and associated RECs produced by the PV System shall be the full responsibility of the SRC Producer.

2.3 Positive Price and Payments to SRC Producer for Photovoltaic Energy and Associated RECs. The price to be paid by Public Service for the purchase of the Photovoltaic Energy and the associated RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. If the price to be paid is positive, as set forth in the SRC Bid, Public Service shall pay SRC Producer the price of \$ 48.61 per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Payments for such purchases shall be made monthly by check to SRC Producer for the Photovoltaic Energy and the associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.4 Negative Price and Option for One-Time Payment to Public Service for Photovoltaic Energy and Associated RECs. If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, Public Service and the SRC Producer may agree that the SRC Producer may make a one-time payment to Public Service of \$ N/A. Such payment shall be made by check to Public Service issued within thirty (30) days after the Date of Commercial Operation.

2.5 Negative Price and Payment(s) to Public Service. The price to be paid by SRC Producer to Public Service for acceptance of RECs shall be expressed in dollars per megawatt-hour (MWh). If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, SRC Producer shall pay Public Service the price of \$ N/A per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Unless otherwise paid in accordance with Section 2.4, payments shall be made by check to Public Service by SRC

Producer and shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.6 Purchase and Sale of Unsubscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy and associated RECs purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy and associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading. Notwithstanding anything to the contrary, Public Service's payment obligation set forth in this Section 2.6 is SRC Producer's sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are not attributable to Subscriptions.

2.7 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all RECs associated with such Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances.

2.8 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

ARTICLE III **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer warrants and covenants from and after the Date of Commercial Operation to Public Service as follows:

(a) SRC Producer will be either the PV System Owner or a subscriber organization organized under Section 40-2-127, C.R.S., duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.

(b) SRC Producer will be duly authorized to sell and deliver to Public Service Photovoltaic Energy and associated RECs produced by the PV System on behalf of all SRC Subscribers who then have valid Subscriptions in the PV System.

(c) SRC Producer will have the right and authority to sell the unsubscribed Photovoltaic Energy and associated RECs produced by the PV System to Public Service.

(d) SRC Producer will at all times have a designated primary application manager or other authorized representative, and such individual will have authority to act on behalf of SRC Producer (and Public Service will be entitled to rely on such individual's authority) for all actions contemplated by this Agreement, including payment direction to return the Deposit or escrowed funds under Sections 4.4 and 4.5.

(e) PV System Owner has authorized SRC Producer (which authorization has not been revoked, terminated or limited in any respect) to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions.
SRC Producer covenants and warrants during the Term as follows:

(a) No SRC Subscriber will, at any time following the Date of Commercial Operation, own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy and associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) SRC Producer shall ensure that each Subscription is sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises; provided that the minimum one kW sizing requirement herein will not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber will be a premise served by Public Service and will be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) Unless otherwise expressly agreed by Public Service in writing, SRC Producer shall allocate Subscriptions to the classes or categories of Subscribers set forth on Exhibit D, including, if applicable, Eligible Low-Income CSG Subscribers or residential rate class service customers (R, RE-TOU, RD, or RD-TDR), in the percentages of the SRC Allocation as set forth on Exhibit D (each percentage, a "Subscriber Mix Commitment"), and SRC Producer shall cause each such Subscriber Mix Commitment to be at least as great as the corresponding commitment set forth in the SRC Bid. If, at any time, SRC Producer fails to meet or exceed any Subscriber Mix Commitment, SRC Producer will only be entitled to payment at the unsubscribed energy and REC rate set forth in Section 2.6 for that portion of the SRC Allocation set aside or dedicated for the applicable Subscriber Mix Commitment that fails to meet such Subscriber Mix Commitment.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed will not be the generation of electricity for retail or wholesale sale.

In addition to any other rights and remedies set forth herein, (i) Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of SRC Producer's preceding requirements set forth in this Section 3.3 and (ii) if an SRC Allocation for any SRC Subscriber or Subscription no longer complies with the preceding requirements set forth in this Section 3.3 as determined in Public Service's discretion, then Public Service may treat such SRC Allocation as unsubscribed unless and until such all such requirements have been met with respect to such SRC Subscriber and such Subscription.

3.4 Requirements and Restrictions Applicable to the PV System. SRC Producer further covenants and warrants during the Term as follows:

(a) Following the Date of Commercial Operation, the PV System will have at least ten SRC Subscribers.

(b) The PV System will have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System will be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If the PV System is or will no longer be located within Public Service's existing service territory, then Public Service may terminate this Agreement, which termination

will be effective on the date of Public Service's written notice of such termination, or, if later, the date that the PV System is no longer located within Public Service's service territory.

(d) The location of CSGs will not result in more than 2 MWs of Commonly Owned total capacity of CSGs energized within a 0.5 mile distance as measured from point of interconnection to point of interconnection for Rural CSGs. In Urban areas the distance between points of interconnection between Commonly Owned CSGs will be maintained at 0.5 miles; however, the capacity allowed within this distance will be increased to 4.0 MW. Furthermore, each awarded CSG must be contained on its own legal parcel of land.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System will be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

In addition to any other rights and remedies set forth herein, Public Service may refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during any period that SRC Producer is not in compliance with the preceding requirements set forth in this Section 3.4.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be solely responsible for ensuring and shall ensure that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

ARTICLE IV

TERM, COMMERCIAL OPERATION AND PERFORMANCE

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, or expiration to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination or expiration and, as applicable, to provide for final billings and adjustments related to the period prior to termination or expiration, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

4.2 Project Development. Prior to the Date of Commercial Operation, SRC Producer agrees to (i) submit regular progress reports (and not fewer than semi-annually) to Company

including current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Date of Commercial Operation; (ii) provide copies of reports submitted to the PV System Lender relating to status, progress and development of the project, (iii) upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep the Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained. Upon request, the Company shall have the right to monitor the construction, start-up, testing, and operation of the PV System at the Solar Garden Site for compliance with this Agreement, the SRC Bid, the SRC Application, and the Post-Bid Requirements, *provided, however, that* Company shall comply with all of SRC Producer's reasonable and applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the PV System is authorized to operate by Public Service; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within ninety (90) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as the required Deposit in connection with its SRC Application; less any amounts deducted in accordance with Section 5.1. Notwithstanding the foregoing, if this Agreement is terminated for any reason other than Public Service's failure to perform or observe any material term or provision of this Agreement, then the Deposit shall become non-refundable and forfeited by SRC Producer to the Renewable Energy Standard Adjustment account.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3882(d) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3882, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged, destroyed or is otherwise out of operation, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy and associated RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to (a) the estimated annual generation of the PV System, as determined via PVWATTS, after applying an annual cell degradation factor of one percent (1%) each year (compounded) after the first year, multiplied by (b) the number of years or partial years remaining in the Term as of the effective date of such termination, and further multiplied by (c) the positive difference resulting, if any, by subtracting (i) the price per MWh to be paid (expressed as a negative number if SRC Producer is paying Public Service) for the Photovoltaic Energy and the associated RECs set forth in Sections 2.3 through 2.5, as applicable, from (ii) the weighted-average price per MWh for Photovoltaic Energy and associated RECs of the awarded bids under Public Service's most recent request for proposal under its Solar*Rewards Community Service program. In no event will the foregoing calculation be deemed to obligate Public Service to make any payment to SRC Producer. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that (i) the liquidated damages set forth herein are not a penalty and (ii) that Public Service's actual damages in the event of an SRC Producer default under this Section 4.6 would be difficult to ascertain and that the liquidated damages set forth herein adequately represent the Parties' best estimate of such damages.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy and associated RECs produced and delivered during such Production Month to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine

the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (*e.g.*, account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Review of Low-Income Qualification. The SRC Producer shall assist Public Service with verifying that any eligible low-income CSG subscriber, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, meets the requirements set forth in 4 CCR 723-3-3652(o). Assistance may include but is not limited to providing any documentation of low-income status as defined above or providing any contact information for the verifying agency or organization.

4.9 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. If the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. If the SRC Subscriber to which such SRC Allocation is attributable no longer meets the qualification of low income as defined under 4 CCR 723-3-3652(o) in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. Furthermore, until the remedy has occurred the SRC Producer will be paid at the rate described in Section 2.6 of this Agreement for any energy producer that is attributable to the applicable SRC Allocation.

4.10 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.11 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.12 No Relocation. Upon Commercial Operation, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.13 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.14 Request for Information. Until the Date of Commercial Operation, SRC Producer shall promptly provide (and no later than 10 days following the date of any request) Public Service with any and all information and documentation reasonably requested by Public Service regarding the current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, including, without limitation, any significant developments or delays along with an action plan for making up such delays and SRC Producer's best estimate of the date of Substantial Completion.

4.15 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

ARTICLE V

PRODUCTION METER AND INTERCONNECTION

5.1 Construction Timelines. The SRC Producer will have 24 months to bring the PV System to Substantial Completion from the date of notice that the SRC Bid was a winning bid (the "Target Completion Date"). If the PV System has not achieved Substantial Completion by the Target Completion Date, the Deposit will be forfeited to the Renewable Energy Standard Adjustment account in an amount equal to 1/180th of the Deposit per day for each day following the Target Completion Date that the PV System has not been brought to Substantial Completion, not to exceed the Deposit. If the PV System has not been brought to Substantial Completion after 30 months, Public Service will consider the PV System incomplete and have the right to remove it from the Solar*Rewards Community program with any associated capacity forfeited and terminate this Agreement which will be effective upon written notice to SRC Producer of such termination.

5.2 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and

read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.3 Telecommunications Equipment. SRC Producer shall cause to be provided, and shall own, operate and maintain at the SRC Producer's sole cost any necessary electronic communications equipment or devices that are required to provide Public Service real-time access to 15-minute interval data regarding the Photovoltaic Energy produced by the PV System. Unless otherwise notified in writing by Public Service that an alternative telecommunication device is acceptable, such equipment shall include an active, wired telephone or data line capable of transmitting the monthly 15-minute interval data to Public Service. Public Service reserves the right to replace the telecommunication equipment at its sole cost.

5.4 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.3 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. SRC Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.5 Interconnection Agreement. The Parties recognize that PV System Owner and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rules 3850 through 3859 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3850, *et. seq.*, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated August 6, 2020, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, (a) nothing in the Interconnection Agreement shall alter or modify SRC

Producer's or Public Service's rights, duties and obligations under this Agreement and (b) this Agreement may be terminated by Public Service in its sole discretion upon the termination of the Interconnection Agreement which will be effective upon written notice to SRC Producer of such termination. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.6 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.6. SRC Producer's right to self-generate hereunder shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

ARTICLE VI

FORCE MAJEURE

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC

Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy and associated RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend

such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the SRC Producer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

ARTICLE VII
DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Events of Default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below (an “Event of Default”):

(A) A breach by either Party of its material covenants or warranties set forth in this Agreement, that is not excused by Force Majeure, and such breach remaining unremedied for 30 Days after notice thereof having been given by the non-defaulting Party.

(B) Any representation or warranty made by SRC Producer in this Agreement, the SRC Bid, the SRC Application, or the Post-Bid Requirements, including without limitation representations or warranties regarding any characteristics or specifications of the PV System or any Subscriber Mix Commitment, being false or misleading in any material respect when made, or ceasing to remain materially true during the Term of this Agreement.

7.2 Prior to commencing any action to enforce this Agreement, the non-defaulting Party shall provide written notice of default to the Party asserted to be in default and the Party asserted to be in default shall have a period of thirty (30) days following receipt of such written notice within which to cure the asserted default (or if the asserted default is of a nature which cannot reasonably be cured within such 30-day period, to commence and thereafter diligently pursue a cure thereof.)

7.3 Failure of either Party to assert an Event of Default or to enforce any term or condition of this Agreement shall not constitute a waiver of any other similar or other default, or waiver of such term or condition or of any other term or condition of this Agreement. Each Party hereby irrevocably and unconditionally waives any right to a trial by jury for the resolution of any dispute arising under this Agreement.

7.4 If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the prevailing Party in any action brought for the purpose of enforcing such provisions shall be entitled to recover its reasonable attorney fees, expenses and costs of such action from the non-prevailing Party.

7.5 Upon an uncured Event of Default, the non-defaulting Party may terminate this Agreement immediately upon notice to the other Party and pursue any other remedy available to it under this Agreement or under law or in equity.

ARTICLE VIII
LIABILITY AND INDEMNIFICATION

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the tax, financial or legal consequences, if any, to SRC Producer with respect to the installation of the PV System or the production and sale of Photovoltaic Energy and associated RECs, and SRC Producer is urged to seek professional advice regarding these issues.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates (collectively “Indemnified Parties”) harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature (“Losses”) that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer’s administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

8.3 Indemnification by SRC Producer: Environmental. SRC Producer shall indemnify, defend and hold the Indemnified Parties harmless from and against all Losses arising out of any claim alleging Environmental Contamination at the Solar Garden Site and/or illegal disposal of Hazardous Materials off-site, regardless of merit and regardless of SRC Producer’s responsibility therefor.

ARTICLE IX **LAWS AND REGULATORY BODIES**

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto (“Applicable Law”). Without limiting the generality of the foregoing and unless otherwise expressly stated to the contrary in the Colorado Revised Statutes or by an order or decision of the Commission or a rule promulgated by the Commission, the Parties acknowledge and agree that the rules set forth in 4 *Code of Colorado Regulations* 723-3-3665 (or any successor rule or rules of the Commission) and Public Service’s then current Renewable Energy Standard Compliance Plan, as approved by the Commission, as each of them exist as of the date of the RFP (the “Effective Time”) shall govern regardless of any changes, amendments, restatements, modifications, additions, or deletions of such rules or to such plan following the Effective Time.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over the PV System takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both Parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues

any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either Party (in that Party's reasonable good faith opinion), then the Party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other Party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other Party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other Party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that an electronic signature or a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld; provided, however, that Public Service may assign this Agreement to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the location of the PV System. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral

assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent to assignment, in form acceptable to Company, to any of SRC Producer's lenders requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy
Attn: Solar*Rewards Community
1800 Larimer St, 15th Floor
Denver, CO 80202
Fax: 1.800.252.4371

If to SRC Producer:

Jeff Hughes
McKinstry RDCS 1, LLC
4835 East Cactus Road, Ste 100
Scottsdale, AZ 85254

General Counsel
5005 3RD AVE S
SEATTLE, WA, 98134-2423

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, and the SRC Bid constitute the entire understanding and agreement between the Parties with respect to the PV System, and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto. In the event of any conflict or discrepancy between any information provided by SRC Producer in the SRC Bid and the corresponding information set forth herein, including without limitation any REC price, Subscriber Mix Commitment or Construction Milestone, the information in the SRC Bid shall control and shall be deemed to replace and supersede the corresponding information set forth herein, unless otherwise expressly agreed by Public Service in writing.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

SRC Producer

SRC Producer Name (printed): McKinstry RDCS 1, LLC

SRC Producer Representative: Jeff Hughes

Title: Director

Jeffrey Hughes

Digitally signed by Jeffrey Hughes
DN: C=US, E=jeffreyh@mckinstry.com,
O="McKinstry", OU=0560, CN=Jeffrey Hughes
Reason: I agree to the terms defined by the
placement of my signature on this document
Date: 2022.04.15 08:52:40-07'00'

SRC Producer Signature: _____ Date: _____

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

By: Lee Gabler
Title: _____

Digitally signed by Lee
Gabler
Date: 2022.04.28
08:38:16 -06'00'

Date: _____.

**As authorized agent for
Public Service Company of Colorado**

Solar Garden ID No. **SRC083126**

Exhibit A
to
Solar*Rewards Community Producer Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

CCD-CSG8-DEN1
SRC083127
E 114th Ave and Trussville St
Denver, CO 80249

Exhibit B
to
Solar*Rewards Community Producer Agreement

**SRC SUBSCRIBER AGENCY AGREEMENT
FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)**

SRC Subscriber Name: _____

SRC Subscriber Retail Customer Account No.: _____

SRC Subscriber Service Address: _____

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: _____(Primary) _____(Alt.)

SRC Producer (Subscriber Organization) Name: _____

Solar Garden ID No: _____

Name and Location of Solar Garden: _____

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): _____ kW

The undersigned SRC Subscriber hereby authorizes _____ ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit

on any of SRC Subscriber’s electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber’s electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer’s execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber’s bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

1. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber’s agent with respect to SRC Subscriber’s beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber’s subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff.

2. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service’s receipt of notice that SRC Subscriber’s subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

4. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber’s knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

5. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed “Consent to Disclose Utility Customer Data” form granting consent for Public Service to share information regarding SRC Subscriber’s past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber’s eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the Xcel Energy website or the website of the Colorado Public Utilities Commission.

IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER

SRC PRODUCER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit C
to
Solar*Rewards Community Producer Agreement

Construction Milestones

DATE	RESULTS ACHIEVED
1	SRC Producer has submitted post bid information (10 subscribers, deposit/escrow, proposed site location, and low income subscriber summary).
2	The SRC Producer Agreement has been executed.
3	SRC Producer has received site acquisition/control.
4	Site Survey and soils report have been obtained.
5	SRC Producer has obtained all variance allowances and planning approval.
6	SRC Producer has obtained all required permits.
7	SRC Producer has achieved closing on financing for the PV System and the Solar Garden Site, if necessary, or has provided Public Service with proof of financial capability to construct the PV System.
8	SRC Producer and all required counterparties have executed major procurement contracts, the Construction Contract, and any operating agreements needed to commence construction of the PV System.
9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
10	The SRC Producer has started PV System construction.
11	SRC Producer has provided Public Service with copies of applicable inspection reports for the PV System.
12	SRC Producer has provided Public Service with evidence of complying with that insurance coverage required prior to the date of Substantial Completion.
13	SRC Producer shall have made the Interconnection of the CSG generating facility and is capable of being energized.
14	Substantial Completion has been achieved and the date duly recorded.

	15	All other SRC application documentation reasonably requested by Public Service is on file with Public Service.
	16	SRC Producer has Substantially Completed the PV System within 24 months of receiving an award.

Exhibit D
to
Solar*Rewards Community Producer Agreement
Subscriber Mix Commitment

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as Eligible Low-Income CSG Subscribers: 0 %

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as residential rate class service customers (R, RE-TOU, RD, or RD-TDR): 0 %

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Solar Garden ID No. **SRC083128**

Solar*Rewards Community Producer Agreement
Solar*Rewards Community Photovoltaic (PV) Systems
For SRC Producers

This Agreement is made and entered into this 15 day of April, 2022, by and between Public Service Company of Colorado, d/b/a/ Xcel Energy (“Public Service” or “Company”), a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202, and **McKinstry RDCS 1, LLC** (“SRC Producer”), a **Washington Limited Liability Company** whose business address is **5005 3RD AVE S, SEATTLE, WA, 98134-2423**, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS:

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.25 below) with respect to the Photovoltaic Energy and associated Renewable Energy Credits (“RECs”) generated by the community solar garden photovoltaic solar system (the “PV System”) installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (AC) nameplate capacity of 220 kW. The PV System Owner (as defined in Section 1.15 below) has separately provided assurances to Public Service that SRC Producer has the power and authority to enter into this Agreement and perform its obligations hereunder, and that PV System Owner will promptly inform Public Service if SRC Producer no longer has such power and authority (and the identity of any assignee), which assurances are a material inducement to Public Service entering into this Agreement with SRC Producer.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

- 1.1 “Applicable Law” shall have the meaning set forth in Section 9.1 of this Agreement.
- 1.2 “Commission” shall mean the Public Utilities Commission of the State of Colorado.

1.3 “Commonly Owned” shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.4 “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.5 “Deposit” shall mean a security deposit in an amount equal to \$100/kW of the PV System’s Direct Current (DC) nameplate capacity.

1.6 “Electric Tariffs” shall mean Public Service’s electric tariffs as in effect and on file with the Commission from time to time.

1.7 “Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Solar Garden Site will not be available or usable for the purposes contemplated by this Agreement, and/or (iii) will preclude or interfere with SRC Producer’s ability to perform its obligations under this Agreement as and when due.

1.8 “Force Majeure” shall have the meaning set forth in Section 6.1 of this Agreement.

1.9 “Hazardous Material” means any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed or identified under, or which may form the basis for liability under Applicable Law, or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; per- and poly-fluoroalkyl substances; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing materials; medical waste; solid waste, and any excavated soil, debris, or groundwater that is contaminated with such materials.

1.10 “House Power” shall mean the supply of retail power for consumption at the Solar Garden Site.

1.11 “Interconnection Agreement” shall mean the separate agreement to be entered into between PV System Owner and Public Service providing the terms and conditions by which PV System Owner may interconnect and operate the PV System in parallel with Public Service’s electric distribution system at the Solar Garden Site.

1.12 “Monthly Subscription Information” shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.7 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber’s identifying information, and the SRC Allocation applicable to each such SRC Subscriber’s Subscription, reflecting each SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.13 “Photovoltaic Energy” shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.14 “Post-Bid Requirements” shall have the meaning set forth in the RFP.

1.15 “Production Meter” shall mean the measuring facility installed by Public Service pursuant to Section 5.2 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy and the associated RECs change possession from SRC Producer to Public Service.

1.16 “Production Month” shall mean the calendar month during which Photovoltaic Energy and associated RECs are produced by the PV System and delivered to Public Service at the Production Meter.

1.17 “PV System” shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy and associated RECs subject to this Agreement.

1.18 “PV System Owner” shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System.

1.19 “PVWATTS” shall mean the National Renewable Energy Laboratory’s PVWATTS Calculator, or any successor product or service.

1.20 “Renewable Energy Credit” or “REC” shall have the meaning set forth in 4 CCR 723-3-3652. In addition REC shall also mean the right to all non-energy and environmental attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the capacity available and/or energy generated by the PV system, including environmental air quality credits, tags and allowances created by law or regulation by virtue of the PV system’s environmentally favorable or renewable characteristics or attributes. “RECs” includes but is not limited to rights eligible for registration, trading and/or use under the Western Renewable Energy Generation Information System (“WREGIS”).

For the avoidance of doubt, a “REC” excludes (i) any local, state or federal production tax credit, depreciation deductions or other tax credits providing a tax benefit to SRC Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, including the investment tax credit expected to be available to SRC Producer or the owner of the PV System with respect to the PV System under Internal Revenue Code Section 48 (Energy Credits); (ii) any direct governmental grant or payment inuring to the benefit of SRC Producer or

the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, pursuant to Section 1603 of the American Recovery and Reinvestment Act, or other federal or state legislation; and (iii) depreciation and other tax benefits arising from ownership or operation of the PV System unrelated to its status as a generator of renewable or environmentally clean energy.

1.21 “RFP” shall mean the Public Service request for proposal regarding the purchase of Photovoltaic Energy and associated RECs from Community Solar Gardens that SRC Producer responded to with its SRC Bid.

1.22 “Rural” shall mean an area classified as “rural” by the United States Census Bureau as of the date of execution of this Agreement.

1.23 “Solar Garden Site” shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement, which may be updated by the mutual agreement of the Parties from time to time.

1.24 “Solar*Rewards Community Application and Subscriber Management System” or “SRC Application System” is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service’s Solar*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber’s allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$500 for each user that logs into to the SRC Application and Subscriber Management System. This number is subject to change in future contract cycles with the software platform vender. Checks should be made out to “Public Service Company of Colorado” and must be submitted with the SRC Producer Agreement.

1.25 “SRC Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber’s Subscription reflecting such SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.7 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.26 “SRC Application” shall have the meaning set forth in the RFP.

1.27 “SRC Bid” shall mean SRC Producer’s bid for the sale of Photovoltaic Energy and associated RECs from the PV System in response to the RFP.

1.28 “SRC Credit” shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber’s retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service’s Electric Tariffs.

1.29 “SRC Subscriber” shall mean the retail electric service customer of Public Service who: (a) owns a beneficial share of the Photovoltaic Energy and associated RECs produced by the PV System pursuant to a Subscription; (b) has attributed such Subscription to one or more premises served by Public Service where it is the customer of record; and (c) has entered into a SRC Subscriber Agency Agreement with SRC Producer.

1.30 “SRC Subscriber Agency Agreement” shall mean an agreement entered into between each SRC Subscriber and SRC Producer, in a form substantially the same as the SRC Subscriber Agency Agreement attached hereto as Exhibit B, by and through which each SRC Subscriber has authorized SRC Producer to act as SRC Subscriber’s agent for purposes of this Agreement, including, among other things, to sell SRC Subscriber’s beneficial share of Photovoltaic Energy and associated RECs generated by the PV System to Public Service.

1.31 “Subscription” shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

1.32 “Substantial Completion” shall mean the date that all construction and installation of the PV System is completed, and the PV System is ready to be commissioned at the full-agreed upon generation capacity, including, but not limited to, a set transformer, meter set request, and the SRC Producer having requested a scheduled witness test for the PV System.

1.33 “Urban” shall mean an area classified as “urban” by the United States Census Bureau as of the date of execution of this Agreement.

ARTICLE II TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS

2.1 Sale and Delivery of Subscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy and associated RECs produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System. Notwithstanding anything to the contrary, Public Service’s payment obligation set forth in Section 2.3, if applicable, and the SRC Credits (as an indirect inducement of SRC Subscribers to obtain Subscriptions from SRC Producer) are SRC Producer’s sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are attributable to Subscriptions.

2.2 SRC Credits.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy and associated RECs produced by the PV System shall be the full responsibility of the SRC Producer.

2.3 Positive Price and Payments to SRC Producer for Photovoltaic Energy and Associated RECs. The price to be paid by Public Service for the purchase of the Photovoltaic Energy and the associated RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. If the price to be paid is positive, as set forth in the SRC Bid, Public Service shall pay SRC Producer the price of \$ 48.61 per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Payments for such purchases shall be made monthly by check to SRC Producer for the Photovoltaic Energy and the associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.4 Negative Price and Option for One-Time Payment to Public Service for Photovoltaic Energy and Associated RECs. If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, Public Service and the SRC Producer may agree that the SRC Producer may make a one-time payment to Public Service of \$ N/A. Such payment shall be made by check to Public Service issued within thirty (30) days after the Date of Commercial Operation.

2.5 Negative Price and Payment(s) to Public Service. The price to be paid by SRC Producer to Public Service for acceptance of RECs shall be expressed in dollars per megawatt-hour (MWh). If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, SRC Producer shall pay Public Service the price of \$ N/A per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Unless otherwise paid in accordance with Section 2.4, payments shall be made by check to Public Service by SRC

Producer and shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.6 Purchase and Sale of Unsubscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy and associated RECs purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy and associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading. Notwithstanding anything to the contrary, Public Service's payment obligation set forth in this Section 2.6 is SRC Producer's sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are not attributable to Subscriptions.

2.7 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all RECs associated with such Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances.

2.8 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

ARTICLE III **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer warrants and covenants from and after the Date of Commercial Operation to Public Service as follows:

(a) SRC Producer will be either the PV System Owner or a subscriber organization organized under Section 40-2-127, C.R.S., duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.

(b) SRC Producer will be duly authorized to sell and deliver to Public Service Photovoltaic Energy and associated RECs produced by the PV System on behalf of all SRC Subscribers who then have valid Subscriptions in the PV System.

(c) SRC Producer will have the right and authority to sell the unsubscribed Photovoltaic Energy and associated RECs produced by the PV System to Public Service.

(d) SRC Producer will at all times have a designated primary application manager or other authorized representative, and such individual will have authority to act on behalf of SRC Producer (and Public Service will be entitled to rely on such individual's authority) for all actions contemplated by this Agreement, including payment direction to return the Deposit or escrowed funds under Sections 4.4 and 4.5.

(e) PV System Owner has authorized SRC Producer (which authorization has not been revoked, terminated or limited in any respect) to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions.
SRC Producer covenants and warrants during the Term as follows:

(a) No SRC Subscriber will, at any time following the Date of Commercial Operation, own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy and associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) SRC Producer shall ensure that each Subscription is sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises; provided that the minimum one kW sizing requirement herein will not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber will be a premise served by Public Service and will be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) Unless otherwise expressly agreed by Public Service in writing, SRC Producer shall allocate Subscriptions to the classes or categories of Subscribers set forth on Exhibit D, including, if applicable, Eligible Low-Income CSG Subscribers or residential rate class service customers (R, RE-TOU, RD, or RD-TDR), in the percentages of the SRC Allocation as set forth on Exhibit D (each percentage, a "Subscriber Mix Commitment"), and SRC Producer shall cause each such Subscriber Mix Commitment to be at least as great as the corresponding commitment set forth in the SRC Bid. If, at any time, SRC Producer fails to meet or exceed any Subscriber Mix Commitment, SRC Producer will only be entitled to payment at the unsubscribed energy and REC rate set forth in Section 2.6 for that portion of the SRC Allocation set aside or dedicated for the applicable Subscriber Mix Commitment that fails to meet such Subscriber Mix Commitment.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed will not be the generation of electricity for retail or wholesale sale.

In addition to any other rights and remedies set forth herein, (i) Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of SRC Producer's preceding requirements set forth in this Section 3.3 and (ii) if an SRC Allocation for any SRC Subscriber or Subscription no longer complies with the preceding requirements set forth in this Section 3.3 as determined in Public Service's discretion, then Public Service may treat such SRC Allocation as unsubscribed unless and until such all such requirements have been met with respect to such SRC Subscriber and such Subscription.

3.4 Requirements and Restrictions Applicable to the PV System. SRC Producer further covenants and warrants during the Term as follows:

(a) Following the Date of Commercial Operation, the PV System will have at least ten SRC Subscribers.

(b) The PV System will have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System will be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If the PV System is or will no longer be located within Public Service's existing service territory, then Public Service may terminate this Agreement, which termination

will be effective on the date of Public Service's written notice of such termination, or, if later, the date that the PV System is no longer located within Public Service's service territory.

(d) The location of CSGs will not result in more than 2 MWs of Commonly Owned total capacity of CSGs energized within a 0.5 mile distance as measured from point of interconnection to point of interconnection for Rural CSGs. In Urban areas the distance between points of interconnection between Commonly Owned CSGs will be maintained at 0.5 miles; however, the capacity allowed within this distance will be increased to 4.0 MW. Furthermore, each awarded CSG must be contained on its own legal parcel of land.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System will be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

In addition to any other rights and remedies set forth herein, Public Service may refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during any period that SRC Producer is not in compliance with the preceding requirements set forth in this Section 3.4.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be solely responsible for ensuring and shall ensure that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

ARTICLE IV

TERM, COMMERCIAL OPERATION AND PERFORMANCE

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, or expiration to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination or expiration and, as applicable, to provide for final billings and adjustments related to the period prior to termination or expiration, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

4.2 Project Development. Prior to the Date of Commercial Operation, SRC Producer agrees to (i) submit regular progress reports (and not fewer than semi-annually) to Company

including current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Date of Commercial Operation; (ii) provide copies of reports submitted to the PV System Lender relating to status, progress and development of the project, (iii) upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep the Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained. Upon request, the Company shall have the right to monitor the construction, start-up, testing, and operation of the PV System at the Solar Garden Site for compliance with this Agreement, the SRC Bid, the SRC Application, and the Post-Bid Requirements, *provided, however, that* Company shall comply with all of SRC Producer's reasonable and applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the PV System is authorized to operate by Public Service; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within ninety (90) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as the required Deposit in connection with its SRC Application; less any amounts deducted in accordance with Section 5.1. Notwithstanding the foregoing, if this Agreement is terminated for any reason other than Public Service's failure to perform or observe any material term or provision of this Agreement, then the Deposit shall become non-refundable and forfeited by SRC Producer to the Renewable Energy Standard Adjustment account.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3882(d) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3882, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged, destroyed or is otherwise out of operation, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy and associated RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to (a) the estimated annual generation of the PV System, as determined via PVWATTS, after applying an annual cell degradation factor of one percent (1%) each year (compounded) after the first year, multiplied by (b) the number of years or partial years remaining in the Term as of the effective date of such termination, and further multiplied by (c) the positive difference resulting, if any, by subtracting (i) the price per MWh to be paid (expressed as a negative number if SRC Producer is paying Public Service) for the Photovoltaic Energy and the associated RECs set forth in Sections 2.3 through 2.5, as applicable, from (ii) the weighted-average price per MWh for Photovoltaic Energy and associated RECs of the awarded bids under Public Service's most recent request for proposal under its Solar*Rewards Community Service program. In no event will the foregoing calculation be deemed to obligate Public Service to make any payment to SRC Producer. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that (i) the liquidated damages set forth herein are not a penalty and (ii) that Public Service's actual damages in the event of an SRC Producer default under this Section 4.6 would be difficult to ascertain and that the liquidated damages set forth herein adequately represent the Parties' best estimate of such damages.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy and associated RECs produced and delivered during such Production Month to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine

the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (*e.g.*, account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Review of Low-Income Qualification. The SRC Producer shall assist Public Service with verifying that any eligible low-income CSG subscriber, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, meets the requirements set forth in 4 CCR 723-3-3652(o). Assistance may include but is not limited to providing any documentation of low-income status as defined above or providing any contact information for the verifying agency or organization.

4.9 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. If the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. If the SRC Subscriber to which such SRC Allocation is attributable no longer meets the qualification of low income as defined under 4 CCR 723-3-3652(o) in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. Furthermore, until the remedy has occurred the SRC Producer will be paid at the rate described in Section 2.6 of this Agreement for any energy producer that is attributable to the applicable SRC Allocation.

4.10 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.11 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.12 No Relocation. Upon Commercial Operation, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.13 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.14 Request for Information. Until the Date of Commercial Operation, SRC Producer shall promptly provide (and no later than 10 days following the date of any request) Public Service with any and all information and documentation reasonably requested by Public Service regarding the current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, including, without limitation, any significant developments or delays along with an action plan for making up such delays and SRC Producer's best estimate of the date of Substantial Completion.

4.15 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

ARTICLE V

PRODUCTION METER AND INTERCONNECTION

5.1 Construction Timelines. The SRC Producer will have 24 months to bring the PV System to Substantial Completion from the date of notice that the SRC Bid was a winning bid (the "Target Completion Date"). If the PV System has not achieved Substantial Completion by the Target Completion Date, the Deposit will be forfeited to the Renewable Energy Standard Adjustment account in an amount equal to 1/180th of the Deposit per day for each day following the Target Completion Date that the PV System has not been brought to Substantial Completion, not to exceed the Deposit. If the PV System has not been brought to Substantial Completion after 30 months, Public Service will consider the PV System incomplete and have the right to remove it from the Solar*Rewards Community program with any associated capacity forfeited and terminate this Agreement which will be effective upon written notice to SRC Producer of such termination.

5.2 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and

read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.3 Telecommunications Equipment. SRC Producer shall cause to be provided, and shall own, operate and maintain at the SRC Producer's sole cost any necessary electronic communications equipment or devices that are required to provide Public Service real-time access to 15-minute interval data regarding the Photovoltaic Energy produced by the PV System. Unless otherwise notified in writing by Public Service that an alternative telecommunication device is acceptable, such equipment shall include an active, wired telephone or data line capable of transmitting the monthly 15-minute interval data to Public Service. Public Service reserves the right to replace the telecommunication equipment at its sole cost.

5.4 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.3 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. SRC Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.5 Interconnection Agreement. The Parties recognize that PV System Owner and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rules 3850 through 3859 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3850, *et. seq.*, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated August 6, 2020, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, (a) nothing in the Interconnection Agreement shall alter or modify SRC

Producer's or Public Service's rights, duties and obligations under this Agreement and (b) this Agreement may be terminated by Public Service in its sole discretion upon the termination of the Interconnection Agreement which will be effective upon written notice to SRC Producer of such termination. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.6 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.6. SRC Producer's right to self-generate hereunder shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

ARTICLE VI

FORCE MAJEURE

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC

Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy and associated RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend

such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the SRC Producer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

ARTICLE VII
DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Events of Default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below (an “Event of Default”):

(A) A breach by either Party of its material covenants or warranties set forth in this Agreement, that is not excused by Force Majeure, and such breach remaining unremedied for 30 Days after notice thereof having been given by the non-defaulting Party.

(B) Any representation or warranty made by SRC Producer in this Agreement, the SRC Bid, the SRC Application, or the Post-Bid Requirements, including without limitation representations or warranties regarding any characteristics or specifications of the PV System or any Subscriber Mix Commitment, being false or misleading in any material respect when made, or ceasing to remain materially true during the Term of this Agreement.

7.2 Prior to commencing any action to enforce this Agreement, the non-defaulting Party shall provide written notice of default to the Party asserted to be in default and the Party asserted to be in default shall have a period of thirty (30) days following receipt of such written notice within which to cure the asserted default (or if the asserted default is of a nature which cannot reasonably be cured within such 30-day period, to commence and thereafter diligently pursue a cure thereof.)

7.3 Failure of either Party to assert an Event of Default or to enforce any term or condition of this Agreement shall not constitute a waiver of any other similar or other default, or waiver of such term or condition or of any other term or condition of this Agreement. Each Party hereby irrevocably and unconditionally waives any right to a trial by jury for the resolution of any dispute arising under this Agreement.

7.4 If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the prevailing Party in any action brought for the purpose of enforcing such provisions shall be entitled to recover its reasonable attorney fees, expenses and costs of such action from the non-prevailing Party.

7.5 Upon an uncured Event of Default, the non-defaulting Party may terminate this Agreement immediately upon notice to the other Party and pursue any other remedy available to it under this Agreement or under law or in equity.

ARTICLE VIII
LIABILITY AND INDEMNIFICATION

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the tax, financial or legal consequences, if any, to SRC Producer with respect to the installation of the PV System or the production and sale of Photovoltaic Energy and associated RECs, and SRC Producer is urged to seek professional advice regarding these issues.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates (collectively “Indemnified Parties”) harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature (“Losses”) that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer’s administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

8.3 Indemnification by SRC Producer: Environmental. SRC Producer shall indemnify, defend and hold the Indemnified Parties harmless from and against all Losses arising out of any claim alleging Environmental Contamination at the Solar Garden Site and/or illegal disposal of Hazardous Materials off-site, regardless of merit and regardless of SRC Producer’s responsibility therefor.

ARTICLE IX **LAWS AND REGULATORY BODIES**

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto (“Applicable Law”). Without limiting the generality of the foregoing and unless otherwise expressly stated to the contrary in the Colorado Revised Statutes or by an order or decision of the Commission or a rule promulgated by the Commission, the Parties acknowledge and agree that the rules set forth in 4 *Code of Colorado Regulations* 723-3-3665 (or any successor rule or rules of the Commission) and Public Service’s then current Renewable Energy Standard Compliance Plan, as approved by the Commission, as each of them exist as of the date of the RFP (the “Effective Time”) shall govern regardless of any changes, amendments, restatements, modifications, additions, or deletions of such rules or to such plan following the Effective Time.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over the PV System takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both Parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues

any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either Party (in that Party's reasonable good faith opinion), then the Party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other Party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other Party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other Party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that an electronic signature or a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld; provided, however, that Public Service may assign this Agreement to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the location of the PV System. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral

assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent to assignment, in form acceptable to Company, to any of SRC Producer's lenders requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy
Attn: Solar*Rewards Community
1800 Larimer St, 15th Floor
Denver, CO 80202
Fax: 1.800.252.4371

If to SRC Producer:

Jeff Hughes
McKinstry RDCS 1, LLC
4835 East Cactus Road, Ste 100
Scottsdale, AZ 85254

General Counsel
5005 3RD AVE S
SEATTLE, WA, 98134-2423

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, and the SRC Bid constitute the entire understanding and agreement between the Parties with respect to the PV System, and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto. In the event of any conflict or discrepancy between any information provided by SRC Producer in the SRC Bid and the corresponding information set forth herein, including without limitation any REC price, Subscriber Mix Commitment or Construction Milestone, the information in the SRC Bid shall control and shall be deemed to replace and supersede the corresponding information set forth herein, unless otherwise expressly agreed by Public Service in writing.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

SRC Producer

SRC Producer Name (printed): McKinstry RDCS 1, LLC

SRC Producer Representative: Jeff Hughes

Title: Director

Jeffrey Hughes

Digitally signed by Jeffrey Hughes
DN: C=US, E=jeffreyh@mcKinstry.com,
O="McKinstry ", OU=0560, CN=Jeffrey Hughes
Reason: I agree to the terms defined by the
placement of my signature on this document
Date: 2022.04.15 08:53:21-07'00'

SRC Producer Signature: _____ Date: _____

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

Digitally signed by Lee
Gabler
By: **Lee Gabler** Date: 2022.04.28
Title: _____ 08:38:46 -06'00'

Date: _____.

**As authorized agent for
Public Service Company of Colorado**

Solar Garden ID No. SRC083128

Exhibit A
to
Solar*Rewards Community Producer Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

CCD-CSG14-NWC M&O
SRC083128
5125 Race Court
Denver, CO 80216

Exhibit B
to
Solar*Rewards Community Producer Agreement

**SRC SUBSCRIBER AGENCY AGREEMENT
FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)**

SRC Subscriber Name: _____

SRC Subscriber Retail Customer Account No.: _____

SRC Subscriber Service Address: _____

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: _____(Primary) _____(Alt.)

SRC Producer (Subscriber Organization) Name: _____

Solar Garden ID No: _____

Name and Location of Solar Garden: _____

SRC Subscriber’s Initial Subscription Share (in kilowatts, or “kW”): _____ kW

The undersigned SRC Subscriber hereby authorizes _____ (“SRC Producer”), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber’s agent for purposes of selling to Public Service Company of Colorado (“Public Service”) all of SRC Subscriber’s beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System (“PV System”) identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service’s Solar*Rewards Community Program and Rate Schedule SRC of Public Service’s electric tariff on file with the Colorado Public Utilities Commission (“Commission”) and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber’s information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber’s subsequent electric service bills as compensation for Public Service’s receipt of SRC Subscriber’s share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber’s electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber’s electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit

on any of SRC Subscriber’s electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber’s electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer’s execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber’s bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

1. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber’s agent with respect to SRC Subscriber’s beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber’s subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff.

2. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service’s receipt of notice that SRC Subscriber’s subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

4. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber’s knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

5. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed “Consent to Disclose Utility Customer Data” form granting consent for Public Service to share information regarding SRC Subscriber’s past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber’s eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the Xcel Energy website or the website of the Colorado Public Utilities Commission.

IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER

SRC PRODUCER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit C
to
Solar*Rewards Community Producer Agreement

Construction Milestones

DATE	RESULTS ACHIEVED
1	SRC Producer has submitted post bid information (10 subscribers, deposit/escrow, proposed site location, and low income subscriber summary).
2	The SRC Producer Agreement has been executed.
3	SRC Producer has received site acquisition/control.
4	Site Survey and soils report have been obtained.
5	SRC Producer has obtained all variance allowances and planning approval.
6	SRC Producer has obtained all required permits.
7	SRC Producer has achieved closing on financing for the PV System and the Solar Garden Site, if necessary, or has provided Public Service with proof of financial capability to construct the PV System.
8	SRC Producer and all required counterparties have executed major procurement contracts, the Construction Contract, and any operating agreements needed to commence construction of the PV System.
9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
10	The SRC Producer has started PV System construction.
11	SRC Producer has provided Public Service with copies of applicable inspection reports for the PV System.
12	SRC Producer has provided Public Service with evidence of complying with that insurance coverage required prior to the date of Substantial Completion.
13	SRC Producer shall have made the Interconnection of the CSG generating facility and is capable of being energized.
14	Substantial Completion has been achieved and the date duly recorded.

	15	All other SRC application documentation reasonably requested by Public Service is on file with Public Service.
	16	SRC Producer has Substantially Completed the PV System within 24 months of receiving an award.

Exhibit D
to
Solar*Rewards Community Producer Agreement
Subscriber Mix Commitment

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as Eligible Low-Income CSG Subscribers: 0 %

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as residential rate class service customers (R, RE-TOU, RD, or RD-TDR): 0 %

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Solar Garden ID No. **SRC083129**

Solar*Rewards Community Producer Agreement
Solar*Rewards Community Photovoltaic (PV) Systems
For SRC Producers

This Agreement is made and entered into this 15 day of April, 2022, by and between Public Service Company of Colorado, d/b/a/ Xcel Energy (“Public Service” or “Company”), a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202, and **McKinstry RDCS 1, LLC** (“SRC Producer”), a **Washington Limited Liability Company** whose business address is **5005 3RD AVE S, SEATTLE, WA, 98134-2423**, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS:

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.25 below) with respect to the Photovoltaic Energy and associated Renewable Energy Credits (“RECs”) generated by the community solar garden photovoltaic solar system (the “PV System”) installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (AC) nameplate capacity of 312 kW. The PV System Owner (as defined in Section 1.15 below) has separately provided assurances to Public Service that SRC Producer has the power and authority to enter into this Agreement and perform its obligations hereunder, and that PV System Owner will promptly inform Public Service if SRC Producer no longer has such power and authority (and the identity of any assignee), which assurances are a material inducement to Public Service entering into this Agreement with SRC Producer.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

- 1.1 “Applicable Law” shall have the meaning set forth in Section 9.1 of this Agreement.
- 1.2 “Commission” shall mean the Public Utilities Commission of the State of Colorado.

1.3 “Commonly Owned” shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.4 “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.5 “Deposit” shall mean a security deposit in an amount equal to \$100/kW of the PV System’s Direct Current (DC) nameplate capacity.

1.6 “Electric Tariffs” shall mean Public Service’s electric tariffs as in effect and on file with the Commission from time to time.

1.7 “Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Solar Garden Site will not be available or usable for the purposes contemplated by this Agreement, and/or (iii) will preclude or interfere with SRC Producer’s ability to perform its obligations under this Agreement as and when due.

1.8 “Force Majeure” shall have the meaning set forth in Section 6.1 of this Agreement.

1.9 “Hazardous Material” means any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed or identified under, or which may form the basis for liability under Applicable Law, or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; per- and poly-fluoroalkyl substances; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing materials; medical waste; solid waste, and any excavated soil, debris, or groundwater that is contaminated with such materials.

1.10 “House Power” shall mean the supply of retail power for consumption at the Solar Garden Site.

1.11 “Interconnection Agreement” shall mean the separate agreement to be entered into between PV System Owner and Public Service providing the terms and conditions by which PV System Owner may interconnect and operate the PV System in parallel with Public Service’s electric distribution system at the Solar Garden Site.

1.12 “Monthly Subscription Information” shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.7 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber’s identifying information, and the SRC Allocation applicable to each such SRC Subscriber’s Subscription, reflecting each SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.13 “Photovoltaic Energy” shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.14 “Post-Bid Requirements” shall have the meaning set forth in the RFP.

1.15 “Production Meter” shall mean the measuring facility installed by Public Service pursuant to Section 5.2 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy and the associated RECs change possession from SRC Producer to Public Service.

1.16 “Production Month” shall mean the calendar month during which Photovoltaic Energy and associated RECs are produced by the PV System and delivered to Public Service at the Production Meter.

1.17 “PV System” shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy and associated RECs subject to this Agreement.

1.18 “PV System Owner” shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System.

1.19 “PVWATTS” shall mean the National Renewable Energy Laboratory’s PVWATTS Calculator, or any successor product or service.

1.20 “Renewable Energy Credit” or “REC” shall have the meaning set forth in 4 CCR 723-3-3652. In addition REC shall also mean the right to all non-energy and environmental attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the capacity available and/or energy generated by the PV system, including environmental air quality credits, tags and allowances created by law or regulation by virtue of the PV system’s environmentally favorable or renewable characteristics or attributes. “RECs” includes but is not limited to rights eligible for registration, trading and/or use under the Western Renewable Energy Generation Information System (“WREGIS”).

For the avoidance of doubt, a “REC” excludes (i) any local, state or federal production tax credit, depreciation deductions or other tax credits providing a tax benefit to SRC Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, including the investment tax credit expected to be available to SRC Producer or the owner of the PV System with respect to the PV System under Internal Revenue Code Section 48 (Energy Credits); (ii) any direct governmental grant or payment inuring to the benefit of SRC Producer or

the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, pursuant to Section 1603 of the American Recovery and Reinvestment Act, or other federal or state legislation; and (iii) depreciation and other tax benefits arising from ownership or operation of the PV System unrelated to its status as a generator of renewable or environmentally clean energy.

1.21 “RFP” shall mean the Public Service request for proposal regarding the purchase of Photovoltaic Energy and associated RECs from Community Solar Gardens that SRC Producer responded to with its SRC Bid.

1.22 “Rural” shall mean an area classified as “rural” by the United States Census Bureau as of the date of execution of this Agreement.

1.23 “Solar Garden Site” shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement, which may be updated by the mutual agreement of the Parties from time to time.

1.24 “Solar*Rewards Community Application and Subscriber Management System” or “SRC Application System” is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service’s Solar*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber’s allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$500 for each user that logs into to the SRC Application and Subscriber Management System. This number is subject to change in future contract cycles with the software platform vender. Checks should be made out to “Public Service Company of Colorado” and must be submitted with the SRC Producer Agreement.

1.25 “SRC Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber’s Subscription reflecting such SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.7 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.26 “SRC Application” shall have the meaning set forth in the RFP.

1.27 “SRC Bid” shall mean SRC Producer’s bid for the sale of Photovoltaic Energy and associated RECs from the PV System in response to the RFP.

1.28 “SRC Credit” shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber’s retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service’s Electric Tariffs.

1.29 “SRC Subscriber” shall mean the retail electric service customer of Public Service who: (a) owns a beneficial share of the Photovoltaic Energy and associated RECs produced by the PV System pursuant to a Subscription; (b) has attributed such Subscription to one or more premises served by Public Service where it is the customer of record; and (c) has entered into a SRC Subscriber Agency Agreement with SRC Producer.

1.30 “SRC Subscriber Agency Agreement” shall mean an agreement entered into between each SRC Subscriber and SRC Producer, in a form substantially the same as the SRC Subscriber Agency Agreement attached hereto as Exhibit B, by and through which each SRC Subscriber has authorized SRC Producer to act as SRC Subscriber’s agent for purposes of this Agreement, including, among other things, to sell SRC Subscriber’s beneficial share of Photovoltaic Energy and associated RECs generated by the PV System to Public Service.

1.31 “Subscription” shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

1.32 “Substantial Completion” shall mean the date that all construction and installation of the PV System is completed, and the PV System is ready to be commissioned at the full-agreed upon generation capacity, including, but not limited to, a set transformer, meter set request, and the SRC Producer having requested a scheduled witness test for the PV System.

1.33 “Urban” shall mean an area classified as “urban” by the United States Census Bureau as of the date of execution of this Agreement.

ARTICLE II TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS

2.1 Sale and Delivery of Subscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy and associated RECs produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System. Notwithstanding anything to the contrary, Public Service’s payment obligation set forth in Section 2.3, if applicable, and the SRC Credits (as an indirect inducement of SRC Subscribers to obtain Subscriptions from SRC Producer) are SRC Producer’s sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are attributable to Subscriptions.

2.2 SRC Credits.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy and associated RECs produced by the PV System shall be the full responsibility of the SRC Producer.

2.3 Positive Price and Payments to SRC Producer for Photovoltaic Energy and Associated RECs. The price to be paid by Public Service for the purchase of the Photovoltaic Energy and the associated RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. If the price to be paid is positive, as set forth in the SRC Bid, Public Service shall pay SRC Producer the price of \$ 48.61 per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Payments for such purchases shall be made monthly by check to SRC Producer for the Photovoltaic Energy and the associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.4 Negative Price and Option for One-Time Payment to Public Service for Photovoltaic Energy and Associated RECs. If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, Public Service and the SRC Producer may agree that the SRC Producer may make a one-time payment to Public Service of \$ N/A. Such payment shall be made by check to Public Service issued within thirty (30) days after the Date of Commercial Operation.

2.5 Negative Price and Payment(s) to Public Service. The price to be paid by SRC Producer to Public Service for acceptance of RECs shall be expressed in dollars per megawatt-hour (MWh). If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, SRC Producer shall pay Public Service the price of \$ N/A per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Unless otherwise paid in accordance with Section 2.4, payments shall be made by check to Public Service by SRC

Producer and shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.6 Purchase and Sale of Unsubscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy and associated RECs purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy and associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading. Notwithstanding anything to the contrary, Public Service's payment obligation set forth in this Section 2.6 is SRC Producer's sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are not attributable to Subscriptions.

2.7 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all RECs associated with such Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances.

2.8 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

ARTICLE III **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer warrants and covenants from and after the Date of Commercial Operation to Public Service as follows:

(a) SRC Producer will be either the PV System Owner or a subscriber organization organized under Section 40-2-127, C.R.S., duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.

(b) SRC Producer will be duly authorized to sell and deliver to Public Service Photovoltaic Energy and associated RECs produced by the PV System on behalf of all SRC Subscribers who then have valid Subscriptions in the PV System.

(c) SRC Producer will have the right and authority to sell the unsubscribed Photovoltaic Energy and associated RECs produced by the PV System to Public Service.

(d) SRC Producer will at all times have a designated primary application manager or other authorized representative, and such individual will have authority to act on behalf of SRC Producer (and Public Service will be entitled to rely on such individual's authority) for all actions contemplated by this Agreement, including payment direction to return the Deposit or escrowed funds under Sections 4.4 and 4.5.

(e) PV System Owner has authorized SRC Producer (which authorization has not been revoked, terminated or limited in any respect) to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions.
SRC Producer covenants and warrants during the Term as follows:

(a) No SRC Subscriber will, at any time following the Date of Commercial Operation, own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy and associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) SRC Producer shall ensure that each Subscription is sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises; provided that the minimum one kW sizing requirement herein will not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber will be a premise served by Public Service and will be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) Unless otherwise expressly agreed by Public Service in writing, SRC Producer shall allocate Subscriptions to the classes or categories of Subscribers set forth on Exhibit D, including, if applicable, Eligible Low-Income CSG Subscribers or residential rate class service customers (R, RE-TOU, RD, or RD-TDR), in the percentages of the SRC Allocation as set forth on Exhibit D (each percentage, a "Subscriber Mix Commitment"), and SRC Producer shall cause each such Subscriber Mix Commitment to be at least as great as the corresponding commitment set forth in the SRC Bid. If, at any time, SRC Producer fails to meet or exceed any Subscriber Mix Commitment, SRC Producer will only be entitled to payment at the unsubscribed energy and REC rate set forth in Section 2.6 for that portion of the SRC Allocation set aside or dedicated for the applicable Subscriber Mix Commitment that fails to meet such Subscriber Mix Commitment.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed will not be the generation of electricity for retail or wholesale sale.

In addition to any other rights and remedies set forth herein, (i) Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of SRC Producer's preceding requirements set forth in this Section 3.3 and (ii) if an SRC Allocation for any SRC Subscriber or Subscription no longer complies with the preceding requirements set forth in this Section 3.3 as determined in Public Service's discretion, then Public Service may treat such SRC Allocation as unsubscribed unless and until such all such requirements have been met with respect to such SRC Subscriber and such Subscription.

3.4 Requirements and Restrictions Applicable to the PV System. SRC Producer further covenants and warrants during the Term as follows:

(a) Following the Date of Commercial Operation, the PV System will have at least ten SRC Subscribers.

(b) The PV System will have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System will be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If the PV System is or will no longer be located within Public Service's existing service territory, then Public Service may terminate this Agreement, which termination

will be effective on the date of Public Service's written notice of such termination, or, if later, the date that the PV System is no longer located within Public Service's service territory.

(d) The location of CSGs will not result in more than 2 MWs of Commonly Owned total capacity of CSGs energized within a 0.5 mile distance as measured from point of interconnection to point of interconnection for Rural CSGs. In Urban areas the distance between points of interconnection between Commonly Owned CSGs will be maintained at 0.5 miles; however, the capacity allowed within this distance will be increased to 4.0 MW. Furthermore, each awarded CSG must be contained on its own legal parcel of land.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System will be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

In addition to any other rights and remedies set forth herein, Public Service may refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during any period that SRC Producer is not in compliance with the preceding requirements set forth in this Section 3.4.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be solely responsible for ensuring and shall ensure that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

ARTICLE IV

TERM, COMMERCIAL OPERATION AND PERFORMANCE

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, or expiration to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination or expiration and, as applicable, to provide for final billings and adjustments related to the period prior to termination or expiration, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

4.2 Project Development. Prior to the Date of Commercial Operation, SRC Producer agrees to (i) submit regular progress reports (and not fewer than semi-annually) to Company

including current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Date of Commercial Operation; (ii) provide copies of reports submitted to the PV System Lender relating to status, progress and development of the project, (iii) upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep the Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained. Upon request, the Company shall have the right to monitor the construction, start-up, testing, and operation of the PV System at the Solar Garden Site for compliance with this Agreement, the SRC Bid, the SRC Application, and the Post-Bid Requirements, *provided, however, that* Company shall comply with all of SRC Producer's reasonable and applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the PV System is authorized to operate by Public Service; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within ninety (90) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as the required Deposit in connection with its SRC Application; less any amounts deducted in accordance with Section 5.1. Notwithstanding the foregoing, if this Agreement is terminated for any reason other than Public Service's failure to perform or observe any material term or provision of this Agreement, then the Deposit shall become non-refundable and forfeited by SRC Producer to the Renewable Energy Standard Adjustment account.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3882(d) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3882, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged, destroyed or is otherwise out of operation, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy and associated RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to (a) the estimated annual generation of the PV System, as determined via PVWATTS, after applying an annual cell degradation factor of one percent (1%) each year (compounded) after the first year, multiplied by (b) the number of years or partial years remaining in the Term as of the effective date of such termination, and further multiplied by (c) the positive difference resulting, if any, by subtracting (i) the price per MWh to be paid (expressed as a negative number if SRC Producer is paying Public Service) for the Photovoltaic Energy and the associated RECs set forth in Sections 2.3 through 2.5, as applicable, from (ii) the weighted-average price per MWh for Photovoltaic Energy and associated RECs of the awarded bids under Public Service's most recent request for proposal under its Solar*Rewards Community Service program. In no event will the foregoing calculation be deemed to obligate Public Service to make any payment to SRC Producer. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that (i) the liquidated damages set forth herein are not a penalty and (ii) that Public Service's actual damages in the event of an SRC Producer default under this Section 4.6 would be difficult to ascertain and that the liquidated damages set forth herein adequately represent the Parties' best estimate of such damages.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy and associated RECs produced and delivered during such Production Month to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine

the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (*e.g.*, account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Review of Low-Income Qualification. The SRC Producer shall assist Public Service with verifying that any eligible low-income CSG subscriber, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, meets the requirements set forth in 4 CCR 723-3-3652(o). Assistance may include but is not limited to providing any documentation of low-income status as defined above or providing any contact information for the verifying agency or organization.

4.9 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. If the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. If the SRC Subscriber to which such SRC Allocation is attributable no longer meets the qualification of low income as defined under 4 CCR 723-3-3652(o) in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. Furthermore, until the remedy has occurred the SRC Producer will be paid at the rate described in Section 2.6 of this Agreement for any energy producer that is attributable to the applicable SRC Allocation.

4.10 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.11 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.12 No Relocation. Upon Commercial Operation, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.13 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.14 Request for Information. Until the Date of Commercial Operation, SRC Producer shall promptly provide (and no later than 10 days following the date of any request) Public Service with any and all information and documentation reasonably requested by Public Service regarding the current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, including, without limitation, any significant developments or delays along with an action plan for making up such delays and SRC Producer's best estimate of the date of Substantial Completion.

4.15 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

ARTICLE V

PRODUCTION METER AND INTERCONNECTION

5.1 Construction Timelines. The SRC Producer will have 24 months to bring the PV System to Substantial Completion from the date of notice that the SRC Bid was a winning bid (the "Target Completion Date"). If the PV System has not achieved Substantial Completion by the Target Completion Date, the Deposit will be forfeited to the Renewable Energy Standard Adjustment account in an amount equal to 1/180th of the Deposit per day for each day following the Target Completion Date that the PV System has not been brought to Substantial Completion, not to exceed the Deposit. If the PV System has not been brought to Substantial Completion after 30 months, Public Service will consider the PV System incomplete and have the right to remove it from the Solar*Rewards Community program with any associated capacity forfeited and terminate this Agreement which will be effective upon written notice to SRC Producer of such termination.

5.2 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and

read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.3 Telecommunications Equipment. SRC Producer shall cause to be provided, and shall own, operate and maintain at the SRC Producer's sole cost any necessary electronic communications equipment or devices that are required to provide Public Service real-time access to 15-minute interval data regarding the Photovoltaic Energy produced by the PV System. Unless otherwise notified in writing by Public Service that an alternative telecommunication device is acceptable, such equipment shall include an active, wired telephone or data line capable of transmitting the monthly 15-minute interval data to Public Service. Public Service reserves the right to replace the telecommunication equipment at its sole cost.

5.4 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.3 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. SRC Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.5 Interconnection Agreement. The Parties recognize that PV System Owner and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rules 3850 through 3859 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3850, *et. seq.*, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated August 6, 2020, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, (a) nothing in the Interconnection Agreement shall alter or modify SRC

Producer's or Public Service's rights, duties and obligations under this Agreement and (b) this Agreement may be terminated by Public Service in its sole discretion upon the termination of the Interconnection Agreement which will be effective upon written notice to SRC Producer of such termination. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.6 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.6. SRC Producer's right to self-generate hereunder shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

ARTICLE VI **FORCE MAJEURE**

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC

Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy and associated RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend

such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the SRC Producer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

ARTICLE VII
DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Events of Default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below (an “Event of Default”):

(A) A breach by either Party of its material covenants or warranties set forth in this Agreement, that is not excused by Force Majeure, and such breach remaining unremedied for 30 Days after notice thereof having been given by the non-defaulting Party.

(B) Any representation or warranty made by SRC Producer in this Agreement, the SRC Bid, the SRC Application, or the Post-Bid Requirements, including without limitation representations or warranties regarding any characteristics or specifications of the PV System or any Subscriber Mix Commitment, being false or misleading in any material respect when made, or ceasing to remain materially true during the Term of this Agreement.

7.2 Prior to commencing any action to enforce this Agreement, the non-defaulting Party shall provide written notice of default to the Party asserted to be in default and the Party asserted to be in default shall have a period of thirty (30) days following receipt of such written notice within which to cure the asserted default (or if the asserted default is of a nature which cannot reasonably be cured within such 30-day period, to commence and thereafter diligently pursue a cure thereof.)

7.3 Failure of either Party to assert an Event of Default or to enforce any term or condition of this Agreement shall not constitute a waiver of any other similar or other default, or waiver of such term or condition or of any other term or condition of this Agreement. Each Party hereby irrevocably and unconditionally waives any right to a trial by jury for the resolution of any dispute arising under this Agreement.

7.4 If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the prevailing Party in any action brought for the purpose of enforcing such provisions shall be entitled to recover its reasonable attorney fees, expenses and costs of such action from the non-prevailing Party.

7.5 Upon an uncured Event of Default, the non-defaulting Party may terminate this Agreement immediately upon notice to the other Party and pursue any other remedy available to it under this Agreement or under law or in equity.

ARTICLE VIII
LIABILITY AND INDEMNIFICATION

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the tax, financial or legal consequences, if any, to SRC Producer with respect to the installation of the PV System or the production and sale of Photovoltaic Energy and associated RECs, and SRC Producer is urged to seek professional advice regarding these issues.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates (collectively “Indemnified Parties”) harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature (“Losses”) that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer’s administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

8.3 Indemnification by SRC Producer: Environmental. SRC Producer shall indemnify, defend and hold the Indemnified Parties harmless from and against all Losses arising out of any claim alleging Environmental Contamination at the Solar Garden Site and/or illegal disposal of Hazardous Materials off-site, regardless of merit and regardless of SRC Producer’s responsibility therefor.

ARTICLE IX **LAWS AND REGULATORY BODIES**

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto (“Applicable Law”). Without limiting the generality of the foregoing and unless otherwise expressly stated to the contrary in the Colorado Revised Statutes or by an order or decision of the Commission or a rule promulgated by the Commission, the Parties acknowledge and agree that the rules set forth in 4 *Code of Colorado Regulations* 723-3-3665 (or any successor rule or rules of the Commission) and Public Service’s then current Renewable Energy Standard Compliance Plan, as approved by the Commission, as each of them exist as of the date of the RFP (the “Effective Time”) shall govern regardless of any changes, amendments, restatements, modifications, additions, or deletions of such rules or to such plan following the Effective Time.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over the PV System takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both Parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues

any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either Party (in that Party's reasonable good faith opinion), then the Party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other Party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other Party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other Party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that an electronic signature or a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld; provided, however, that Public Service may assign this Agreement to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the location of the PV System. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral

assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent to assignment, in form acceptable to Company, to any of SRC Producer's lenders requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy
Attn: Solar*Rewards Community
1800 Larimer St, 15th Floor
Denver, CO 80202
Fax: 1.800.252.4371

If to SRC Producer:

Jeff Hughes
McKinstry RDCS 1, LLC
4835 East Cactus Road, Ste 100
Scottsdale, AZ 85254

General Counsel
5005 3RD AVE S
SEATTLE, WA, 98134-2423

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, and the SRC Bid constitute the entire understanding and agreement between the Parties with respect to the PV System, and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto. In the event of any conflict or discrepancy between any information provided by SRC Producer in the SRC Bid and the corresponding information set forth herein, including without limitation any REC price, Subscriber Mix Commitment or Construction Milestone, the information in the SRC Bid shall control and shall be deemed to replace and supersede the corresponding information set forth herein, unless otherwise expressly agreed by Public Service in writing.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

SRC Producer

SRC Producer Name (printed): McKinstry RDCS 1, LLC

SRC Producer Representative: Jeff Hughes

Title: Director

Jeffrey Hughes

Digitally signed by Jeffrey Hughes
DN: C=US, E=jeffreyh@mcKinstry.com,
O="McKinstry ", OU=0560, CN=Jeffrey Hughes
Reason: I agree to the terms defined by the
placement of my signature on this document
Date: 2022.04.15 08:53:58-07'00'

SRC Producer Signature: _____ Date: _____

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

By: Lee Gabler
Title: _____

Digitally signed by Lee
Gabler
Date: 2022.04.28 08:39:13
-06'00'

Date: _____.

**As authorized agent for
Public Service Company of Colorado**

Solar Garden ID No. SRC083129

Exhibit A
to
Solar*Rewards Community Producer Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

CCD-CSG4-Lowry Tennis
SRC083129
Sports Blvd. & East Fairmount Dr
Denver, CO 80230

Exhibit B
to
Solar*Rewards Community Producer Agreement

**SRC SUBSCRIBER AGENCY AGREEMENT
FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)**

SRC Subscriber Name: _____

SRC Subscriber Retail Customer Account No.: _____

SRC Subscriber Service Address: _____

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: _____(Primary) _____(Alt.)

SRC Producer (Subscriber Organization) Name: _____

Solar Garden ID No: _____

Name and Location of Solar Garden: _____

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): _____ kW

The undersigned SRC Subscriber hereby authorizes _____ ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit

on any of SRC Subscriber’s electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber’s electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer’s execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber’s bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

1. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber’s agent with respect to SRC Subscriber’s beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber’s subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff.

2. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service’s receipt of notice that SRC Subscriber’s subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

4. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber’s knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

5. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed “Consent to Disclose Utility Customer Data” form granting consent for Public Service to share information regarding SRC Subscriber’s past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber’s eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the Xcel Energy website or the website of the Colorado Public Utilities Commission.

IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER

SRC PRODUCER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit C
to
Solar*Rewards Community Producer Agreement

Construction Milestones

DATE	RESULTS ACHIEVED
1	SRC Producer has submitted post bid information (10 subscribers, deposit/escrow, proposed site location, and low income subscriber summary).
2	The SRC Producer Agreement has been executed.
3	SRC Producer has received site acquisition/control.
4	Site Survey and soils report have been obtained.
5	SRC Producer has obtained all variance allowances and planning approval.
6	SRC Producer has obtained all required permits.
7	SRC Producer has achieved closing on financing for the PV System and the Solar Garden Site, if necessary, or has provided Public Service with proof of financial capability to construct the PV System.
8	SRC Producer and all required counterparties have executed major procurement contracts, the Construction Contract, and any operating agreements needed to commence construction of the PV System.
9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
10	The SRC Producer has started PV System construction.
11	SRC Producer has provided Public Service with copies of applicable inspection reports for the PV System.
12	SRC Producer has provided Public Service with evidence of complying with that insurance coverage required prior to the date of Substantial Completion.
13	SRC Producer shall have made the Interconnection of the CSG generating facility and is capable of being energized.
14	Substantial Completion has been achieved and the date duly recorded.

	15	All other SRC application documentation reasonably requested by Public Service is on file with Public Service.
	16	SRC Producer has Substantially Completed the PV System within 24 months of receiving an award.

Exhibit D
to
Solar*Rewards Community Producer Agreement
Subscriber Mix Commitment

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as Eligible Low-Income CSG Subscribers: 0 %

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as residential rate class service customers (R, RE-TOU, RD, or RD-TDR): 0 %

[]



Solar Garden ID No. **SRC083131**

Solar*Rewards Community Producer Agreement
Solar*Rewards Community Photovoltaic (PV) Systems
For SRC Producers

This Agreement is made and entered into this 15 day of April, 2022, by and between Public Service Company of Colorado, d/b/a/ Xcel Energy (“Public Service” or “Company”), a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202, and **McKinstry RDCS 1, LLC** (“SRC Producer”), a **Washington Limited Liability Company** whose business address is **5005 3RD AVE S, SEATTLE, WA, 98134-2423**, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS:

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.25 below) with respect to the Photovoltaic Energy and associated Renewable Energy Credits (“RECs”) generated by the community solar garden photovoltaic solar system (the “PV System”) installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (AC) nameplate capacity of 480 kW. The PV System Owner (as defined in Section 1.15 below) has separately provided assurances to Public Service that SRC Producer has the power and authority to enter into this Agreement and perform its obligations hereunder, and that PV System Owner will promptly inform Public Service if SRC Producer no longer has such power and authority (and the identity of any assignee), which assurances are a material inducement to Public Service entering into this Agreement with SRC Producer.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

- 1.1 “Applicable Law” shall have the meaning set forth in Section 9.1 of this Agreement.
- 1.2 “Commission” shall mean the Public Utilities Commission of the State of Colorado.

1.3 “Commonly Owned” shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.4 “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.5 “Deposit” shall mean a security deposit in an amount equal to \$100/kW of the PV System’s Direct Current (DC) nameplate capacity.

1.6 “Electric Tariffs” shall mean Public Service’s electric tariffs as in effect and on file with the Commission from time to time.

1.7 “Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Solar Garden Site will not be available or usable for the purposes contemplated by this Agreement, and/or (iii) will preclude or interfere with SRC Producer’s ability to perform its obligations under this Agreement as and when due.

1.8 “Force Majeure” shall have the meaning set forth in Section 6.1 of this Agreement.

1.9 “Hazardous Material” means any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed or identified under, or which may form the basis for liability under Applicable Law, or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; per- and poly-fluoroalkyl substances; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing materials; medical waste; solid waste, and any excavated soil, debris, or groundwater that is contaminated with such materials.

1.10 “House Power” shall mean the supply of retail power for consumption at the Solar Garden Site.

1.11 “Interconnection Agreement” shall mean the separate agreement to be entered into between PV System Owner and Public Service providing the terms and conditions by which PV System Owner may interconnect and operate the PV System in parallel with Public Service’s electric distribution system at the Solar Garden Site.

1.12 “Monthly Subscription Information” shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.7 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber’s identifying information, and the SRC Allocation applicable to each such SRC Subscriber’s Subscription, reflecting each SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.13 “Photovoltaic Energy” shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.14 “Post-Bid Requirements” shall have the meaning set forth in the RFP.

1.15 “Production Meter” shall mean the measuring facility installed by Public Service pursuant to Section 5.2 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy and the associated RECs change possession from SRC Producer to Public Service.

1.16 “Production Month” shall mean the calendar month during which Photovoltaic Energy and associated RECs are produced by the PV System and delivered to Public Service at the Production Meter.

1.17 “PV System” shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy and associated RECs subject to this Agreement.

1.18 “PV System Owner” shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System.

1.19 “PVWATTS” shall mean the National Renewable Energy Laboratory’s PVWATTS Calculator, or any successor product or service.

1.20 “Renewable Energy Credit” or “REC” shall have the meaning set forth in 4 CCR 723-3-3652. In addition REC shall also mean the right to all non-energy and environmental attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the capacity available and/or energy generated by the PV system, including environmental air quality credits, tags and allowances created by law or regulation by virtue of the PV system’s environmentally favorable or renewable characteristics or attributes. “RECs” includes but is not limited to rights eligible for registration, trading and/or use under the Western Renewable Energy Generation Information System (“WREGIS”).

For the avoidance of doubt, a “REC” excludes (i) any local, state or federal production tax credit, depreciation deductions or other tax credits providing a tax benefit to SRC Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, including the investment tax credit expected to be available to SRC Producer or the owner of the PV System with respect to the PV System under Internal Revenue Code Section 48 (Energy Credits); (ii) any direct governmental grant or payment inuring to the benefit of SRC Producer or

the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, pursuant to Section 1603 of the American Recovery and Reinvestment Act, or other federal or state legislation; and (iii) depreciation and other tax benefits arising from ownership or operation of the PV System unrelated to its status as a generator of renewable or environmentally clean energy.

1.21 “RFP” shall mean the Public Service request for proposal regarding the purchase of Photovoltaic Energy and associated RECs from Community Solar Gardens that SRC Producer responded to with its SRC Bid.

1.22 “Rural” shall mean an area classified as “rural” by the United States Census Bureau as of the date of execution of this Agreement.

1.23 “Solar Garden Site” shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement, which may be updated by the mutual agreement of the Parties from time to time.

1.24 “Solar*Rewards Community Application and Subscriber Management System” or “SRC Application System” is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service’s Solar*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber’s allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$500 for each user that logs into to the SRC Application and Subscriber Management System. This number is subject to change in future contract cycles with the software platform vender. Checks should be made out to “Public Service Company of Colorado” and must be submitted with the SRC Producer Agreement.

1.25 “SRC Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber’s Subscription reflecting such SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.7 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.26 “SRC Application” shall have the meaning set forth in the RFP.

1.27 “SRC Bid” shall mean SRC Producer’s bid for the sale of Photovoltaic Energy and associated RECs from the PV System in response to the RFP.

1.28 “SRC Credit” shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber’s retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service’s Electric Tariffs.

1.29 “SRC Subscriber” shall mean the retail electric service customer of Public Service who: (a) owns a beneficial share of the Photovoltaic Energy and associated RECs produced by the PV System pursuant to a Subscription; (b) has attributed such Subscription to one or more premises served by Public Service where it is the customer of record; and (c) has entered into a SRC Subscriber Agency Agreement with SRC Producer.

1.30 “SRC Subscriber Agency Agreement” shall mean an agreement entered into between each SRC Subscriber and SRC Producer, in a form substantially the same as the SRC Subscriber Agency Agreement attached hereto as Exhibit B, by and through which each SRC Subscriber has authorized SRC Producer to act as SRC Subscriber’s agent for purposes of this Agreement, including, among other things, to sell SRC Subscriber’s beneficial share of Photovoltaic Energy and associated RECs generated by the PV System to Public Service.

1.31 “Subscription” shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

1.32 “Substantial Completion” shall mean the date that all construction and installation of the PV System is completed, and the PV System is ready to be commissioned at the full-agreed upon generation capacity, including, but not limited to, a set transformer, meter set request, and the SRC Producer having requested a scheduled witness test for the PV System.

1.33 “Urban” shall mean an area classified as “urban” by the United States Census Bureau as of the date of execution of this Agreement.

ARTICLE II TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS

2.1 Sale and Delivery of Subscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy and associated RECs produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System. Notwithstanding anything to the contrary, Public Service’s payment obligation set forth in Section 2.3, if applicable, and the SRC Credits (as an indirect inducement of SRC Subscribers to obtain Subscriptions from SRC Producer) are SRC Producer’s sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are attributable to Subscriptions.

2.2 SRC Credits.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy and associated RECs produced by the PV System shall be the full responsibility of the SRC Producer.

2.3 Positive Price and Payments to SRC Producer for Photovoltaic Energy and Associated RECs. The price to be paid by Public Service for the purchase of the Photovoltaic Energy and the associated RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. If the price to be paid is positive, as set forth in the SRC Bid, Public Service shall pay SRC Producer the price of \$ 48.61 per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Payments for such purchases shall be made monthly by check to SRC Producer for the Photovoltaic Energy and the associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.4 Negative Price and Option for One-Time Payment to Public Service for Photovoltaic Energy and Associated RECs. If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, Public Service and the SRC Producer may agree that the SRC Producer may make a one-time payment to Public Service of \$ N/A. Such payment shall be made by check to Public Service issued within thirty (30) days after the Date of Commercial Operation.

2.5 Negative Price and Payment(s) to Public Service. The price to be paid by SRC Producer to Public Service for acceptance of RECs shall be expressed in dollars per megawatt-hour (MWh). If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, SRC Producer shall pay Public Service the price of \$ N/A per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Unless otherwise paid in accordance with Section 2.4, payments shall be made by check to Public Service by SRC

Producer and shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.6 Purchase and Sale of Unsubscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy and associated RECs purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy and associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading. Notwithstanding anything to the contrary, Public Service's payment obligation set forth in this Section 2.6 is SRC Producer's sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are not attributable to Subscriptions.

2.7 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all RECs associated with such Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances.

2.8 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

ARTICLE III **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer warrants and covenants from and after the Date of Commercial Operation to Public Service as follows:

(a) SRC Producer will be either the PV System Owner or a subscriber organization organized under Section 40-2-127, C.R.S., duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.

(b) SRC Producer will be duly authorized to sell and deliver to Public Service Photovoltaic Energy and associated RECs produced by the PV System on behalf of all SRC Subscribers who then have valid Subscriptions in the PV System.

(c) SRC Producer will have the right and authority to sell the unsubscribed Photovoltaic Energy and associated RECs produced by the PV System to Public Service.

(d) SRC Producer will at all times have a designated primary application manager or other authorized representative, and such individual will have authority to act on behalf of SRC Producer (and Public Service will be entitled to rely on such individual's authority) for all actions contemplated by this Agreement, including payment direction to return the Deposit or escrowed funds under Sections 4.4 and 4.5.

(e) PV System Owner has authorized SRC Producer (which authorization has not been revoked, terminated or limited in any respect) to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions.
SRC Producer covenants and warrants during the Term as follows:

(a) No SRC Subscriber will, at any time following the Date of Commercial Operation, own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy and associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) SRC Producer shall ensure that each Subscription is sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises; provided that the minimum one kW sizing requirement herein will not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber will be a premise served by Public Service and will be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) Unless otherwise expressly agreed by Public Service in writing, SRC Producer shall allocate Subscriptions to the classes or categories of Subscribers set forth on Exhibit D, including, if applicable, Eligible Low-Income CSG Subscribers or residential rate class service customers (R, RE-TOU, RD, or RD-TDR), in the percentages of the SRC Allocation as set forth on Exhibit D (each percentage, a "Subscriber Mix Commitment"), and SRC Producer shall cause each such Subscriber Mix Commitment to be at least as great as the corresponding commitment set forth in the SRC Bid. If, at any time, SRC Producer fails to meet or exceed any Subscriber Mix Commitment, SRC Producer will only be entitled to payment at the unsubscribed energy and REC rate set forth in Section 2.6 for that portion of the SRC Allocation set aside or dedicated for the applicable Subscriber Mix Commitment that fails to meet such Subscriber Mix Commitment.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed will not be the generation of electricity for retail or wholesale sale.

In addition to any other rights and remedies set forth herein, (i) Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of SRC Producer's preceding requirements set forth in this Section 3.3 and (ii) if an SRC Allocation for any SRC Subscriber or Subscription no longer complies with the preceding requirements set forth in this Section 3.3 as determined in Public Service's discretion, then Public Service may treat such SRC Allocation as unsubscribed unless and until such all such requirements have been met with respect to such SRC Subscriber and such Subscription.

3.4 Requirements and Restrictions Applicable to the PV System. SRC Producer further covenants and warrants during the Term as follows:

(a) Following the Date of Commercial Operation, the PV System will have at least ten SRC Subscribers.

(b) The PV System will have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System will be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If the PV System is or will no longer be located within Public Service's existing service territory, then Public Service may terminate this Agreement, which termination

will be effective on the date of Public Service's written notice of such termination, or, if later, the date that the PV System is no longer located within Public Service's service territory.

(d) The location of CSGs will not result in more than 2 MWs of Commonly Owned total capacity of CSGs energized within a 0.5 mile distance as measured from point of interconnection to point of interconnection for Rural CSGs. In Urban areas the distance between points of interconnection between Commonly Owned CSGs will be maintained at 0.5 miles; however, the capacity allowed within this distance will be increased to 4.0 MW. Furthermore, each awarded CSG must be contained on its own legal parcel of land.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System will be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

In addition to any other rights and remedies set forth herein, Public Service may refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during any period that SRC Producer is not in compliance with the preceding requirements set forth in this Section 3.4.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be solely responsible for ensuring and shall ensure that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

ARTICLE IV

TERM, COMMERCIAL OPERATION AND PERFORMANCE

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, or expiration to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination or expiration and, as applicable, to provide for final billings and adjustments related to the period prior to termination or expiration, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

4.2 Project Development. Prior to the Date of Commercial Operation, SRC Producer agrees to (i) submit regular progress reports (and not fewer than semi-annually) to Company

including current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Date of Commercial Operation; (ii) provide copies of reports submitted to the PV System Lender relating to status, progress and development of the project, (iii) upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep the Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained. Upon request, the Company shall have the right to monitor the construction, start-up, testing, and operation of the PV System at the Solar Garden Site for compliance with this Agreement, the SRC Bid, the SRC Application, and the Post-Bid Requirements, *provided, however, that* Company shall comply with all of SRC Producer's reasonable and applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the PV System is authorized to operate by Public Service; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within ninety (90) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as the required Deposit in connection with its SRC Application; less any amounts deducted in accordance with Section 5.1. Notwithstanding the foregoing, if this Agreement is terminated for any reason other than Public Service's failure to perform or observe any material term or provision of this Agreement, then the Deposit shall become non-refundable and forfeited by SRC Producer to the Renewable Energy Standard Adjustment account.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3882(d) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3882, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged, destroyed or is otherwise out of operation, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy and associated RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to (a) the estimated annual generation of the PV System, as determined via PVWATTS, after applying an annual cell degradation factor of one percent (1%) each year (compounded) after the first year, multiplied by (b) the number of years or partial years remaining in the Term as of the effective date of such termination, and further multiplied by (c) the positive difference resulting, if any, by subtracting (i) the price per MWh to be paid (expressed as a negative number if SRC Producer is paying Public Service) for the Photovoltaic Energy and the associated RECs set forth in Sections 2.3 through 2.5, as applicable, from (ii) the weighted-average price per MWh for Photovoltaic Energy and associated RECs of the awarded bids under Public Service's most recent request for proposal under its Solar*Rewards Community Service program. In no event will the foregoing calculation be deemed to obligate Public Service to make any payment to SRC Producer. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that (i) the liquidated damages set forth herein are not a penalty and (ii) that Public Service's actual damages in the event of an SRC Producer default under this Section 4.6 would be difficult to ascertain and that the liquidated damages set forth herein adequately represent the Parties' best estimate of such damages.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy and associated RECs produced and delivered during such Production Month to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine

the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (*e.g.*, account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Review of Low-Income Qualification. The SRC Producer shall assist Public Service with verifying that any eligible low-income CSG subscriber, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, meets the requirements set forth in 4 CCR 723-3-3652(o). Assistance may include but is not limited to providing any documentation of low-income status as defined above or providing any contact information for the verifying agency or organization.

4.9 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. If the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. If the SRC Subscriber to which such SRC Allocation is attributable no longer meets the qualification of low income as defined under 4 CCR 723-3-3652(o) in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. Furthermore, until the remedy has occurred the SRC Producer will be paid at the rate described in Section 2.6 of this Agreement for any energy producer that is attributable to the applicable SRC Allocation.

4.10 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.11 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.12 No Relocation. Upon Commercial Operation, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.13 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.14 Request for Information. Until the Date of Commercial Operation, SRC Producer shall promptly provide (and no later than 10 days following the date of any request) Public Service with any and all information and documentation reasonably requested by Public Service regarding the current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, including, without limitation, any significant developments or delays along with an action plan for making up such delays and SRC Producer's best estimate of the date of Substantial Completion.

4.15 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

ARTICLE V

PRODUCTION METER AND INTERCONNECTION

5.1 Construction Timelines. The SRC Producer will have 24 months to bring the PV System to Substantial Completion from the date of notice that the SRC Bid was a winning bid (the "Target Completion Date"). If the PV System has not achieved Substantial Completion by the Target Completion Date, the Deposit will be forfeited to the Renewable Energy Standard Adjustment account in an amount equal to 1/180th of the Deposit per day for each day following the Target Completion Date that the PV System has not been brought to Substantial Completion, not to exceed the Deposit. If the PV System has not been brought to Substantial Completion after 30 months, Public Service will consider the PV System incomplete and have the right to remove it from the Solar*Rewards Community program with any associated capacity forfeited and terminate this Agreement which will be effective upon written notice to SRC Producer of such termination.

5.2 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and

read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.3 Telecommunications Equipment. SRC Producer shall cause to be provided, and shall own, operate and maintain at the SRC Producer's sole cost any necessary electronic communications equipment or devices that are required to provide Public Service real-time access to 15-minute interval data regarding the Photovoltaic Energy produced by the PV System. Unless otherwise notified in writing by Public Service that an alternative telecommunication device is acceptable, such equipment shall include an active, wired telephone or data line capable of transmitting the monthly 15-minute interval data to Public Service. Public Service reserves the right to replace the telecommunication equipment at its sole cost.

5.4 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.3 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. SRC Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.5 Interconnection Agreement. The Parties recognize that PV System Owner and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rules 3850 through 3859 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3850, *et. seq.*, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated August 6, 2020, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, (a) nothing in the Interconnection Agreement shall alter or modify SRC

Producer's or Public Service's rights, duties and obligations under this Agreement and (b) this Agreement may be terminated by Public Service in its sole discretion upon the termination of the Interconnection Agreement which will be effective upon written notice to SRC Producer of such termination. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.6 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.6. SRC Producer's right to self-generate hereunder shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

ARTICLE VI

FORCE MAJEURE

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC

Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy and associated RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend

such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the SRC Producer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

ARTICLE VII
DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Events of Default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below (an “Event of Default”):

(A) A breach by either Party of its material covenants or warranties set forth in this Agreement, that is not excused by Force Majeure, and such breach remaining unremedied for 30 Days after notice thereof having been given by the non-defaulting Party.

(B) Any representation or warranty made by SRC Producer in this Agreement, the SRC Bid, the SRC Application, or the Post-Bid Requirements, including without limitation representations or warranties regarding any characteristics or specifications of the PV System or any Subscriber Mix Commitment, being false or misleading in any material respect when made, or ceasing to remain materially true during the Term of this Agreement.

7.2 Prior to commencing any action to enforce this Agreement, the non-defaulting Party shall provide written notice of default to the Party asserted to be in default and the Party asserted to be in default shall have a period of thirty (30) days following receipt of such written notice within which to cure the asserted default (or if the asserted default is of a nature which cannot reasonably be cured within such 30-day period, to commence and thereafter diligently pursue a cure thereof.)

7.3 Failure of either Party to assert an Event of Default or to enforce any term or condition of this Agreement shall not constitute a waiver of any other similar or other default, or waiver of such term or condition or of any other term or condition of this Agreement. Each Party hereby irrevocably and unconditionally waives any right to a trial by jury for the resolution of any dispute arising under this Agreement.

7.4 If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the prevailing Party in any action brought for the purpose of enforcing such provisions shall be entitled to recover its reasonable attorney fees, expenses and costs of such action from the non-prevailing Party.

7.5 Upon an uncured Event of Default, the non-defaulting Party may terminate this Agreement immediately upon notice to the other Party and pursue any other remedy available to it under this Agreement or under law or in equity.

ARTICLE VIII
LIABILITY AND INDEMNIFICATION

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the tax, financial or legal consequences, if any, to SRC Producer with respect to the installation of the PV System or the production and sale of Photovoltaic Energy and associated RECs, and SRC Producer is urged to seek professional advice regarding these issues.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates (collectively “Indemnified Parties”) harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature (“Losses”) that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer’s administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

8.3 Indemnification by SRC Producer: Environmental. SRC Producer shall indemnify, defend and hold the Indemnified Parties harmless from and against all Losses arising out of any claim alleging Environmental Contamination at the Solar Garden Site and/or illegal disposal of Hazardous Materials off-site, regardless of merit and regardless of SRC Producer’s responsibility therefor.

ARTICLE IX
LAWS AND REGULATORY BODIES

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto (“Applicable Law”). Without limiting the generality of the foregoing and unless otherwise expressly stated to the contrary in the Colorado Revised Statutes or by an order or decision of the Commission or a rule promulgated by the Commission, the Parties acknowledge and agree that the rules set forth in 4 *Code of Colorado Regulations* 723-3-3665 (or any successor rule or rules of the Commission) and Public Service’s then current Renewable Energy Standard Compliance Plan, as approved by the Commission, as each of them exist as of the date of the RFP (the “Effective Time”) shall govern regardless of any changes, amendments, restatements, modifications, additions, or deletions of such rules or to such plan following the Effective Time.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over the PV System takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both Parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues

any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either Party (in that Party's reasonable good faith opinion), then the Party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other Party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other Party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other Party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that an electronic signature or a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld; provided, however, that Public Service may assign this Agreement to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the location of the PV System. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral

assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent to assignment, in form acceptable to Company, to any of SRC Producer's lenders requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy
Attn: Solar*Rewards Community
1800 Larimer St, 15th Floor
Denver, CO 80202
Fax: 1.800.252.4371

If to SRC Producer:

Jeff Hughes
McKinstry RDCS 1, LLC
4835 East Cactus Road, Ste 100
Scottsdale, AZ 85254

General Counsel
5005 3RD AVE S
SEATTLE, WA, 98134-2423

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, and the SRC Bid constitute the entire understanding and agreement between the Parties with respect to the PV System, and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto. In the event of any conflict or discrepancy between any information provided by SRC Producer in the SRC Bid and the corresponding information set forth herein, including without limitation any REC price, Subscriber Mix Commitment or Construction Milestone, the information in the SRC Bid shall control and shall be deemed to replace and supersede the corresponding information set forth herein, unless otherwise expressly agreed by Public Service in writing.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

SRC Producer

SRC Producer Name (printed): McKinstry RDCS 1, LLC

SRC Producer Representative: Jeff Hughes

Title: Director

Jeffrey Hughes

Digitally signed by Jeffrey Hughes
DN: C=US, E=jeffreyh@mcinstry.com,
O="McKinstry ", OU=0560, CN=Jeffrey Hughes
Reason: I agree to the terms defined by the
placement of my signature on this document
Date: 2022.04.15 08:55:13-07'00'

SRC Producer Signature: _____ Date: _____

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

By: Lee Gabler

Digitally signed by Lee
Gabler
Date: 2022.04.28 08:40:30

Date: _____.

Title: _____ -06'00'

**As authorized agent for
Public Service Company of Colorado**

Solar Garden ID No. SRC083131

Exhibit A
to
Solar*Rewards Community Producer Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

CCD-CSG6-Central Park Rec Ctr
SRC083131
9651 East MLK Blvd.
Denver, CO 80238

Exhibit B
to
Solar*Rewards Community Producer Agreement

**SRC SUBSCRIBER AGENCY AGREEMENT
FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)**

SRC Subscriber Name: _____

SRC Subscriber Retail Customer Account No.: _____

SRC Subscriber Service Address: _____

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: _____(Primary) _____(Alt.)

SRC Producer (Subscriber Organization) Name: _____

Solar Garden ID No: _____

Name and Location of Solar Garden: _____

SRC Subscriber’s Initial Subscription Share (in kilowatts, or “kW”): _____ kW

The undersigned SRC Subscriber hereby authorizes _____ (“SRC Producer”), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber’s agent for purposes of selling to Public Service Company of Colorado (“Public Service”) all of SRC Subscriber’s beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System (“PV System”) identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service’s Solar*Rewards Community Program and Rate Schedule SRC of Public Service’s electric tariff on file with the Colorado Public Utilities Commission (“Commission”) and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber’s information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber’s subsequent electric service bills as compensation for Public Service’s receipt of SRC Subscriber’s share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber’s electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber’s electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit

on any of SRC Subscriber’s electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber’s electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer’s execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber’s bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

1. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber’s agent with respect to SRC Subscriber’s beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber’s subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff.

2. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service’s receipt of notice that SRC Subscriber’s subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

4. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber’s knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

5. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed “Consent to Disclose Utility Customer Data” form granting consent for Public Service to share information regarding SRC Subscriber’s past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber’s eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the Xcel Energy website or the website of the Colorado Public Utilities Commission.

IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER

SRC PRODUCER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit C
to
Solar*Rewards Community Producer Agreement

Construction Milestones

DATE	RESULTS ACHIEVED
1	SRC Producer has submitted post bid information (10 subscribers, deposit/escrow, proposed site location, and low income subscriber summary).
2	The SRC Producer Agreement has been executed.
3	SRC Producer has received site acquisition/control.
4	Site Survey and soils report have been obtained.
5	SRC Producer has obtained all variance allowances and planning approval.
6	SRC Producer has obtained all required permits.
7	SRC Producer has achieved closing on financing for the PV System and the Solar Garden Site, if necessary, or has provided Public Service with proof of financial capability to construct the PV System.
8	SRC Producer and all required counterparties have executed major procurement contracts, the Construction Contract, and any operating agreements needed to commence construction of the PV System.
9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
10	The SRC Producer has started PV System construction.
11	SRC Producer has provided Public Service with copies of applicable inspection reports for the PV System.
12	SRC Producer has provided Public Service with evidence of complying with that insurance coverage required prior to the date of Substantial Completion.
13	SRC Producer shall have made the Interconnection of the CSG generating facility and is capable of being energized.
14	Substantial Completion has been achieved and the date duly recorded.

	15	All other SRC application documentation reasonably requested by Public Service is on file with Public Service.
	16	SRC Producer has Substantially Completed the PV System within 24 months of receiving an award.

Exhibit D
to
Solar*Rewards Community Producer Agreement
Subscriber Mix Commitment

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as Eligible Low-Income CSG Subscribers: 0 %

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as residential rate class service customers (R, RE-TOU, RD, or RD-TDR): 0 %

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Solar Garden ID No. **SRC083133**

Solar*Rewards Community Producer Agreement
Solar*Rewards Community Photovoltaic (PV) Systems
For SRC Producers

This Agreement is made and entered into this 15 day of April, 2022, by and between Public Service Company of Colorado, d/b/a/ Xcel Energy (“Public Service” or “Company”), a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202, and **McKinstry RDCS 1, LLC** (“SRC Producer”), a **Washington Limited Liability Company** whose business address is **5005 3RD AVE S, SEATTLE, WA, 98134-2423**, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS:

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.25 below) with respect to the Photovoltaic Energy and associated Renewable Energy Credits (“RECs”) generated by the community solar garden photovoltaic solar system (the “PV System”) installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (AC) nameplate capacity of 446 kW. The PV System Owner (as defined in Section 1.15 below) has separately provided assurances to Public Service that SRC Producer has the power and authority to enter into this Agreement and perform its obligations hereunder, and that PV System Owner will promptly inform Public Service if SRC Producer no longer has such power and authority (and the identity of any assignee), which assurances are a material inducement to Public Service entering into this Agreement with SRC Producer.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

- 1.1 “Applicable Law” shall have the meaning set forth in Section 9.1 of this Agreement.
- 1.2 “Commission” shall mean the Public Utilities Commission of the State of Colorado.

1.3 “Commonly Owned” shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.4 “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.5 “Deposit” shall mean a security deposit in an amount equal to \$100/kW of the PV System’s Direct Current (DC) nameplate capacity.

1.6 “Electric Tariffs” shall mean Public Service’s electric tariffs as in effect and on file with the Commission from time to time.

1.7 “Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Solar Garden Site will not be available or usable for the purposes contemplated by this Agreement, and/or (iii) will preclude or interfere with SRC Producer’s ability to perform its obligations under this Agreement as and when due.

1.8 “Force Majeure” shall have the meaning set forth in Section 6.1 of this Agreement.

1.9 “Hazardous Material” means any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed or identified under, or which may form the basis for liability under Applicable Law, or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; per- and poly-fluoroalkyl substances; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing materials; medical waste; solid waste, and any excavated soil, debris, or groundwater that is contaminated with such materials.

1.10 “House Power” shall mean the supply of retail power for consumption at the Solar Garden Site.

1.11 “Interconnection Agreement” shall mean the separate agreement to be entered into between PV System Owner and Public Service providing the terms and conditions by which PV System Owner may interconnect and operate the PV System in parallel with Public Service’s electric distribution system at the Solar Garden Site.

1.12 “Monthly Subscription Information” shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.7 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber’s identifying information, and the SRC Allocation applicable to each such SRC Subscriber’s Subscription, reflecting each SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.13 “Photovoltaic Energy” shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.14 “Post-Bid Requirements” shall have the meaning set forth in the RFP.

1.15 “Production Meter” shall mean the measuring facility installed by Public Service pursuant to Section 5.2 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy and the associated RECs change possession from SRC Producer to Public Service.

1.16 “Production Month” shall mean the calendar month during which Photovoltaic Energy and associated RECs are produced by the PV System and delivered to Public Service at the Production Meter.

1.17 “PV System” shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy and associated RECs subject to this Agreement.

1.18 “PV System Owner” shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System.

1.19 “PVWATTS” shall mean the National Renewable Energy Laboratory’s PVWATTS Calculator, or any successor product or service.

1.20 “Renewable Energy Credit” or “REC” shall have the meaning set forth in 4 CCR 723-3-3652. In addition REC shall also mean the right to all non-energy and environmental attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the capacity available and/or energy generated by the PV system, including environmental air quality credits, tags and allowances created by law or regulation by virtue of the PV system’s environmentally favorable or renewable characteristics or attributes. “RECs” includes but is not limited to rights eligible for registration, trading and/or use under the Western Renewable Energy Generation Information System (“WREGIS”).

For the avoidance of doubt, a “REC” excludes (i) any local, state or federal production tax credit, depreciation deductions or other tax credits providing a tax benefit to SRC Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, including the investment tax credit expected to be available to SRC Producer or the owner of the PV System with respect to the PV System under Internal Revenue Code Section 48 (Energy Credits); (ii) any direct governmental grant or payment inuring to the benefit of SRC Producer or

the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, pursuant to Section 1603 of the American Recovery and Reinvestment Act, or other federal or state legislation; and (iii) depreciation and other tax benefits arising from ownership or operation of the PV System unrelated to its status as a generator of renewable or environmentally clean energy.

1.21 “RFP” shall mean the Public Service request for proposal regarding the purchase of Photovoltaic Energy and associated RECs from Community Solar Gardens that SRC Producer responded to with its SRC Bid.

1.22 “Rural” shall mean an area classified as “rural” by the United States Census Bureau as of the date of execution of this Agreement.

1.23 “Solar Garden Site” shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement, which may be updated by the mutual agreement of the Parties from time to time.

1.24 “Solar*Rewards Community Application and Subscriber Management System” or “SRC Application System” is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service’s Solar*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber’s allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$500 for each user that logs into to the SRC Application and Subscriber Management System. This number is subject to change in future contract cycles with the software platform vender. Checks should be made out to “Public Service Company of Colorado” and must be submitted with the SRC Producer Agreement.

1.25 “SRC Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber’s Subscription reflecting such SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.7 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.26 “SRC Application” shall have the meaning set forth in the RFP.

1.27 “SRC Bid” shall mean SRC Producer’s bid for the sale of Photovoltaic Energy and associated RECs from the PV System in response to the RFP.

1.28 “SRC Credit” shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber’s retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service’s Electric Tariffs.

1.29 “SRC Subscriber” shall mean the retail electric service customer of Public Service who: (a) owns a beneficial share of the Photovoltaic Energy and associated RECs produced by the PV System pursuant to a Subscription; (b) has attributed such Subscription to one or more premises served by Public Service where it is the customer of record; and (c) has entered into a SRC Subscriber Agency Agreement with SRC Producer.

1.30 “SRC Subscriber Agency Agreement” shall mean an agreement entered into between each SRC Subscriber and SRC Producer, in a form substantially the same as the SRC Subscriber Agency Agreement attached hereto as Exhibit B, by and through which each SRC Subscriber has authorized SRC Producer to act as SRC Subscriber’s agent for purposes of this Agreement, including, among other things, to sell SRC Subscriber’s beneficial share of Photovoltaic Energy and associated RECs generated by the PV System to Public Service.

1.31 “Subscription” shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

1.32 “Substantial Completion” shall mean the date that all construction and installation of the PV System is completed, and the PV System is ready to be commissioned at the full-agreed upon generation capacity, including, but not limited to, a set transformer, meter set request, and the SRC Producer having requested a scheduled witness test for the PV System.

1.33 “Urban” shall mean an area classified as “urban” by the United States Census Bureau as of the date of execution of this Agreement.

ARTICLE II TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS

2.1 Sale and Delivery of Subscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy and associated RECs produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System. Notwithstanding anything to the contrary, Public Service’s payment obligation set forth in Section 2.3, if applicable, and the SRC Credits (as an indirect inducement of SRC Subscribers to obtain Subscriptions from SRC Producer) are SRC Producer’s sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are attributable to Subscriptions.

2.2 SRC Credits.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy and associated RECs produced by the PV System shall be the full responsibility of the SRC Producer.

2.3 Positive Price and Payments to SRC Producer for Photovoltaic Energy and Associated RECs. The price to be paid by Public Service for the purchase of the Photovoltaic Energy and the associated RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. If the price to be paid is positive, as set forth in the SRC Bid, Public Service shall pay SRC Producer the price of \$ 68.61 per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Payments for such purchases shall be made monthly by check to SRC Producer for the Photovoltaic Energy and the associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.4 Negative Price and Option for One-Time Payment to Public Service for Photovoltaic Energy and Associated RECs. If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, Public Service and the SRC Producer may agree that the SRC Producer may make a one-time payment to Public Service of \$ N/A. Such payment shall be made by check to Public Service issued within thirty (30) days after the Date of Commercial Operation.

2.5 Negative Price and Payment(s) to Public Service. The price to be paid by SRC Producer to Public Service for acceptance of RECs shall be expressed in dollars per megawatt-hour (MWh). If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, SRC Producer shall pay Public Service the price of \$ N/A per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Unless otherwise paid in accordance with Section 2.4, payments shall be made by check to Public Service by SRC

Producer and shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.6 Purchase and Sale of Unsubscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy and associated RECs purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy and associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading. Notwithstanding anything to the contrary, Public Service's payment obligation set forth in this Section 2.6 is SRC Producer's sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are not attributable to Subscriptions.

2.7 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all RECs associated with such Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances.

2.8 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

ARTICLE III **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer warrants and covenants from and after the Date of Commercial Operation to Public Service as follows:

(a) SRC Producer will be either the PV System Owner or a subscriber organization organized under Section 40-2-127, C.R.S., duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.

(b) SRC Producer will be duly authorized to sell and deliver to Public Service Photovoltaic Energy and associated RECs produced by the PV System on behalf of all SRC Subscribers who then have valid Subscriptions in the PV System.

(c) SRC Producer will have the right and authority to sell the unsubscribed Photovoltaic Energy and associated RECs produced by the PV System to Public Service.

(d) SRC Producer will at all times have a designated primary application manager or other authorized representative, and such individual will have authority to act on behalf of SRC Producer (and Public Service will be entitled to rely on such individual's authority) for all actions contemplated by this Agreement, including payment direction to return the Deposit or escrowed funds under Sections 4.4 and 4.5.

(e) PV System Owner has authorized SRC Producer (which authorization has not been revoked, terminated or limited in any respect) to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions.
SRC Producer covenants and warrants during the Term as follows:

(a) No SRC Subscriber will, at any time following the Date of Commercial Operation, own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy and associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) SRC Producer shall ensure that each Subscription is sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises; provided that the minimum one kW sizing requirement herein will not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber will be a premise served by Public Service and will be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) Unless otherwise expressly agreed by Public Service in writing, SRC Producer shall allocate Subscriptions to the classes or categories of Subscribers set forth on Exhibit D, including, if applicable, Eligible Low-Income CSG Subscribers or residential rate class service customers (R, RE-TOU, RD, or RD-TDR), in the percentages of the SRC Allocation as set forth on Exhibit D (each percentage, a "Subscriber Mix Commitment"), and SRC Producer shall cause each such Subscriber Mix Commitment to be at least as great as the corresponding commitment set forth in the SRC Bid. If, at any time, SRC Producer fails to meet or exceed any Subscriber Mix Commitment, SRC Producer will only be entitled to payment at the unsubscribed energy and REC rate set forth in Section 2.6 for that portion of the SRC Allocation set aside or dedicated for the applicable Subscriber Mix Commitment that fails to meet such Subscriber Mix Commitment.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed will not be the generation of electricity for retail or wholesale sale.

In addition to any other rights and remedies set forth herein, (i) Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of SRC Producer's preceding requirements set forth in this Section 3.3 and (ii) if an SRC Allocation for any SRC Subscriber or Subscription no longer complies with the preceding requirements set forth in this Section 3.3 as determined in Public Service's discretion, then Public Service may treat such SRC Allocation as unsubscribed unless and until such all such requirements have been met with respect to such SRC Subscriber and such Subscription.

3.4 Requirements and Restrictions Applicable to the PV System. SRC Producer further covenants and warrants during the Term as follows:

(a) Following the Date of Commercial Operation, the PV System will have at least ten SRC Subscribers.

(b) The PV System will have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System will be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If the PV System is or will no longer be located within Public Service's existing service territory, then Public Service may terminate this Agreement, which termination

will be effective on the date of Public Service's written notice of such termination, or, if later, the date that the PV System is no longer located within Public Service's service territory.

(d) The location of CSGs will not result in more than 2 MWs of Commonly Owned total capacity of CSGs energized within a 0.5 mile distance as measured from point of interconnection to point of interconnection for Rural CSGs. In Urban areas the distance between points of interconnection between Commonly Owned CSGs will be maintained at 0.5 miles; however, the capacity allowed within this distance will be increased to 4.0 MW. Furthermore, each awarded CSG must be contained on its own legal parcel of land.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System will be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

In addition to any other rights and remedies set forth herein, Public Service may refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during any period that SRC Producer is not in compliance with the preceding requirements set forth in this Section 3.4.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be solely responsible for ensuring and shall ensure that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

ARTICLE IV

TERM, COMMERCIAL OPERATION AND PERFORMANCE

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, or expiration to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination or expiration and, as applicable, to provide for final billings and adjustments related to the period prior to termination or expiration, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

4.2 Project Development. Prior to the Date of Commercial Operation, SRC Producer agrees to (i) submit regular progress reports (and not fewer than semi-annually) to Company

including current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Date of Commercial Operation; (ii) provide copies of reports submitted to the PV System Lender relating to status, progress and development of the project, (iii) upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep the Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained. Upon request, the Company shall have the right to monitor the construction, start-up, testing, and operation of the PV System at the Solar Garden Site for compliance with this Agreement, the SRC Bid, the SRC Application, and the Post-Bid Requirements, *provided, however, that* Company shall comply with all of SRC Producer's reasonable and applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the PV System is authorized to operate by Public Service; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within ninety (90) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as the required Deposit in connection with its SRC Application; less any amounts deducted in accordance with Section 5.1. Notwithstanding the foregoing, if this Agreement is terminated for any reason other than Public Service's failure to perform or observe any material term or provision of this Agreement, then the Deposit shall become non-refundable and forfeited by SRC Producer to the Renewable Energy Standard Adjustment account.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3882(d) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3882, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged, destroyed or is otherwise out of operation, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy and associated RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to (a) the estimated annual generation of the PV System, as determined via PVWATTS, after applying an annual cell degradation factor of one percent (1%) each year (compounded) after the first year, multiplied by (b) the number of years or partial years remaining in the Term as of the effective date of such termination, and further multiplied by (c) the positive difference resulting, if any, by subtracting (i) the price per MWh to be paid (expressed as a negative number if SRC Producer is paying Public Service) for the Photovoltaic Energy and the associated RECs set forth in Sections 2.3 through 2.5, as applicable, from (ii) the weighted-average price per MWh for Photovoltaic Energy and associated RECs of the awarded bids under Public Service's most recent request for proposal under its Solar*Rewards Community Service program. In no event will the foregoing calculation be deemed to obligate Public Service to make any payment to SRC Producer. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that (i) the liquidated damages set forth herein are not a penalty and (ii) that Public Service's actual damages in the event of an SRC Producer default under this Section 4.6 would be difficult to ascertain and that the liquidated damages set forth herein adequately represent the Parties' best estimate of such damages.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy and associated RECs produced and delivered during such Production Month to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine

the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (*e.g.*, account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Review of Low-Income Qualification. The SRC Producer shall assist Public Service with verifying that any eligible low-income CSG subscriber, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, meets the requirements set forth in 4 CCR 723-3-3652(o). Assistance may include but is not limited to providing any documentation of low-income status as defined above or providing any contact information for the verifying agency or organization.

4.9 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. If the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. If the SRC Subscriber to which such SRC Allocation is attributable no longer meets the qualification of low income as defined under 4 CCR 723-3-3652(o) in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. Furthermore, until the remedy has occurred the SRC Producer will be paid at the rate described in Section 2.6 of this Agreement for any energy producer that is attributable to the applicable SRC Allocation.

4.10 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.11 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.12 No Relocation. Upon Commercial Operation, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.13 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.14 Request for Information. Until the Date of Commercial Operation, SRC Producer shall promptly provide (and no later than 10 days following the date of any request) Public Service with any and all information and documentation reasonably requested by Public Service regarding the current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, including, without limitation, any significant developments or delays along with an action plan for making up such delays and SRC Producer's best estimate of the date of Substantial Completion.

4.15 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

ARTICLE V

PRODUCTION METER AND INTERCONNECTION

5.1 Construction Timelines. The SRC Producer will have 24 months to bring the PV System to Substantial Completion from the date of notice that the SRC Bid was a winning bid (the "Target Completion Date"). If the PV System has not achieved Substantial Completion by the Target Completion Date, the Deposit will be forfeited to the Renewable Energy Standard Adjustment account in an amount equal to 1/180th of the Deposit per day for each day following the Target Completion Date that the PV System has not been brought to Substantial Completion, not to exceed the Deposit. If the PV System has not been brought to Substantial Completion after 30 months, Public Service will consider the PV System incomplete and have the right to remove it from the Solar*Rewards Community program with any associated capacity forfeited and terminate this Agreement which will be effective upon written notice to SRC Producer of such termination.

5.2 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and

read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.3 Telecommunications Equipment. SRC Producer shall cause to be provided, and shall own, operate and maintain at the SRC Producer's sole cost any necessary electronic communications equipment or devices that are required to provide Public Service real-time access to 15-minute interval data regarding the Photovoltaic Energy produced by the PV System. Unless otherwise notified in writing by Public Service that an alternative telecommunication device is acceptable, such equipment shall include an active, wired telephone or data line capable of transmitting the monthly 15-minute interval data to Public Service. Public Service reserves the right to replace the telecommunication equipment at its sole cost.

5.4 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.3 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. SRC Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.5 Interconnection Agreement. The Parties recognize that PV System Owner and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rules 3850 through 3859 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3850, *et. seq.*, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated August 6, 2020, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, (a) nothing in the Interconnection Agreement shall alter or modify SRC

Producer's or Public Service's rights, duties and obligations under this Agreement and (b) this Agreement may be terminated by Public Service in its sole discretion upon the termination of the Interconnection Agreement which will be effective upon written notice to SRC Producer of such termination. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.6 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.6. SRC Producer's right to self-generate hereunder shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

ARTICLE VI

FORCE MAJEURE

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC

Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy and associated RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend

such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the SRC Producer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

ARTICLE VII
DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Events of Default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below (an “Event of Default”):

(A) A breach by either Party of its material covenants or warranties set forth in this Agreement, that is not excused by Force Majeure, and such breach remaining unremedied for 30 Days after notice thereof having been given by the non-defaulting Party.

(B) Any representation or warranty made by SRC Producer in this Agreement, the SRC Bid, the SRC Application, or the Post-Bid Requirements, including without limitation representations or warranties regarding any characteristics or specifications of the PV System or any Subscriber Mix Commitment, being false or misleading in any material respect when made, or ceasing to remain materially true during the Term of this Agreement.

7.2 Prior to commencing any action to enforce this Agreement, the non-defaulting Party shall provide written notice of default to the Party asserted to be in default and the Party asserted to be in default shall have a period of thirty (30) days following receipt of such written notice within which to cure the asserted default (or if the asserted default is of a nature which cannot reasonably be cured within such 30-day period, to commence and thereafter diligently pursue a cure thereof.)

7.3 Failure of either Party to assert an Event of Default or to enforce any term or condition of this Agreement shall not constitute a waiver of any other similar or other default, or waiver of such term or condition or of any other term or condition of this Agreement. Each Party hereby irrevocably and unconditionally waives any right to a trial by jury for the resolution of any dispute arising under this Agreement.

7.4 If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the prevailing Party in any action brought for the purpose of enforcing such provisions shall be entitled to recover its reasonable attorney fees, expenses and costs of such action from the non-prevailing Party.

7.5 Upon an uncured Event of Default, the non-defaulting Party may terminate this Agreement immediately upon notice to the other Party and pursue any other remedy available to it under this Agreement or under law or in equity.

ARTICLE VIII
LIABILITY AND INDEMNIFICATION

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the tax, financial or legal consequences, if any, to SRC Producer with respect to the installation of the PV System or the production and sale of Photovoltaic Energy and associated RECs, and SRC Producer is urged to seek professional advice regarding these issues.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates (collectively “Indemnified Parties”) harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature (“Losses”) that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer’s administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

8.3 Indemnification by SRC Producer: Environmental. SRC Producer shall indemnify, defend and hold the Indemnified Parties harmless from and against all Losses arising out of any claim alleging Environmental Contamination at the Solar Garden Site and/or illegal disposal of Hazardous Materials off-site, regardless of merit and regardless of SRC Producer’s responsibility therefor.

ARTICLE IX
LAWS AND REGULATORY BODIES

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto (“Applicable Law”). Without limiting the generality of the foregoing and unless otherwise expressly stated to the contrary in the Colorado Revised Statutes or by an order or decision of the Commission or a rule promulgated by the Commission, the Parties acknowledge and agree that the rules set forth in 4 *Code of Colorado Regulations* 723-3-3665 (or any successor rule or rules of the Commission) and Public Service’s then current Renewable Energy Standard Compliance Plan, as approved by the Commission, as each of them exist as of the date of the RFP (the “Effective Time”) shall govern regardless of any changes, amendments, restatements, modifications, additions, or deletions of such rules or to such plan following the Effective Time.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over the PV System takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both Parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues

any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either Party (in that Party's reasonable good faith opinion), then the Party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other Party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other Party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other Party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that an electronic signature or a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld; provided, however, that Public Service may assign this Agreement to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the location of the PV System. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral

assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent to assignment, in form acceptable to Company, to any of SRC Producer's lenders requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy
Attn: Solar*Rewards Community
1800 Larimer St, 15th Floor
Denver, CO 80202
Fax: 1.800.252.4371

If to SRC Producer:

Jeff Hughes
McKinstry RDCS 1, LLC
4835 East Cactus Road, Ste 100
Scottsdale, AZ 85254

General Counsel
5005 3RD AVE S
SEATTLE, WA, 98134-2423

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, and the SRC Bid constitute the entire understanding and agreement between the Parties with respect to the PV System, and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto. In the event of any conflict or discrepancy between any information provided by SRC Producer in the SRC Bid and the corresponding information set forth herein, including without limitation any REC price, Subscriber Mix Commitment or Construction Milestone, the information in the SRC Bid shall control and shall be deemed to replace and supersede the corresponding information set forth herein, unless otherwise expressly agreed by Public Service in writing.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

SRC Producer

SRC Producer Name (printed): McKinstry RDCS 1, LLC

SRC Producer Representative: Jeff Hughes

Title: Director

Jeffrey Hughes

Digitally signed by Jeffrey Hughes
DN: C=US, E=jeffreyh@mckinstry.com,
O="McKinstry", OU=0560, CN=Jeffrey Hughes
Reason: I agree to the terms defined by the
placement of my signature on this document
Date: 2022.04.15 08:56:01-07'00'

SRC Producer Signature: _____ Date: _____

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

By: **Lee Gabler**
Title: _____
Date: 2022.04.28 08:40:54
-06'00'

Digitally signed by Lee
Gabler

Date: _____.

**As authorized agent for
Public Service Company of Colorado**

Solar Garden ID No. **SRC083133**

Exhibit A
to
Solar*Rewards Community Producer Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

CCD-CSG-DOTI Roslyn Complex
SRC083133
5440 Roslyn St, Denver, CO 80216

Exhibit B
to
Solar*Rewards Community Producer Agreement

**SRC SUBSCRIBER AGENCY AGREEMENT
FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)**

SRC Subscriber Name: _____

SRC Subscriber Retail Customer Account No.: _____

SRC Subscriber Service Address: _____

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: _____(Primary) _____(Alt.)

SRC Producer (Subscriber Organization) Name: _____

Solar Garden ID No: _____

Name and Location of Solar Garden: _____

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): _____ kW

The undersigned SRC Subscriber hereby authorizes _____ ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit

on any of SRC Subscriber’s electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber’s electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer’s execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber’s bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

1. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber’s agent with respect to SRC Subscriber’s beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber’s subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff.

2. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service’s receipt of notice that SRC Subscriber’s subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

4. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber’s knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

5. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed “Consent to Disclose Utility Customer Data” form granting consent for Public Service to share information regarding SRC Subscriber’s past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber’s eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the Xcel Energy website or the website of the Colorado Public Utilities Commission.

IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER

SRC PRODUCER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit C
to
Solar*Rewards Community Producer Agreement

Construction Milestones

DATE	RESULTS ACHIEVED
1	SRC Producer has submitted post bid information (10 subscribers, deposit/escrow, proposed site location, and low income subscriber summary).
2	The SRC Producer Agreement has been executed.
3	SRC Producer has received site acquisition/control.
4	Site Survey and soils report have been obtained.
5	SRC Producer has obtained all variance allowances and planning approval.
6	SRC Producer has obtained all required permits.
7	SRC Producer has achieved closing on financing for the PV System and the Solar Garden Site, if necessary, or has provided Public Service with proof of financial capability to construct the PV System.
8	SRC Producer and all required counterparties have executed major procurement contracts, the Construction Contract, and any operating agreements needed to commence construction of the PV System.
9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
10	The SRC Producer has started PV System construction.
11	SRC Producer has provided Public Service with copies of applicable inspection reports for the PV System.
12	SRC Producer has provided Public Service with evidence of complying with that insurance coverage required prior to the date of Substantial Completion.
13	SRC Producer shall have made the Interconnection of the CSG generating facility and is capable of being energized.
14	Substantial Completion has been achieved and the date duly recorded.

	15	All other SRC application documentation reasonably requested by Public Service is on file with Public Service.
	16	SRC Producer has Substantially Completed the PV System within 24 months of receiving an award.

Exhibit D
to
Solar*Rewards Community Producer Agreement
Subscriber Mix Commitment

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as Eligible Low-Income CSG Subscribers: 0 %

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as residential rate class service customers (R, RE-TOU, RD, or RD-TDR): 0 %

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Solar Garden ID No. **SRC083134**

Solar*Rewards Community Producer Agreement
Solar*Rewards Community Photovoltaic (PV) Systems
For SRC Producers

This Agreement is made and entered into this 15 day of April, 2022, by and between Public Service Company of Colorado, d/b/a/ Xcel Energy (“Public Service” or “Company”), a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202, **McKinstry RDCS 1, LLC** (“SRC Producer”), a **Washington Limited Liability Company** whose business address is **5005 3RD AVE S, SEATTLE, WA, 98134-2423**, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS:

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.25 below) with respect to the Photovoltaic Energy and associated Renewable Energy Credits (“RECs”) generated by the community solar garden photovoltaic solar system (the “PV System”) installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (AC) nameplate capacity of 236 kW. The PV System Owner (as defined in Section 1.15 below) has separately provided assurances to Public Service that SRC Producer has the power and authority to enter into this Agreement and perform its obligations hereunder, and that PV System Owner will promptly inform Public Service if SRC Producer no longer has such power and authority (and the identity of any assignee), which assurances are a material inducement to Public Service entering into this Agreement with SRC Producer.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

- 1.1 “Applicable Law” shall have the meaning set forth in Section 9.1 of this Agreement.
- 1.2 “Commission” shall mean the Public Utilities Commission of the State of Colorado.

1.3 “Commonly Owned” shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.4 “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.5 “Deposit” shall mean a security deposit in an amount equal to \$100/kW of the PV System’s Direct Current (DC) nameplate capacity.

1.6 “Electric Tariffs” shall mean Public Service’s electric tariffs as in effect and on file with the Commission from time to time.

1.7 “Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Solar Garden Site will not be available or usable for the purposes contemplated by this Agreement, and/or (iii) will preclude or interfere with SRC Producer’s ability to perform its obligations under this Agreement as and when due.

1.8 “Force Majeure” shall have the meaning set forth in Section 6.1 of this Agreement.

1.9 “Hazardous Material” means any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed or identified under, or which may form the basis for liability under Applicable Law, or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; per- and poly-fluoroalkyl substances; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing materials; medical waste; solid waste, and any excavated soil, debris, or groundwater that is contaminated with such materials.

1.10 “House Power” shall mean the supply of retail power for consumption at the Solar Garden Site.

1.11 “Interconnection Agreement” shall mean the separate agreement to be entered into between PV System Owner and Public Service providing the terms and conditions by which PV System Owner may interconnect and operate the PV System in parallel with Public Service’s electric distribution system at the Solar Garden Site.

1.12 “Monthly Subscription Information” shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.7 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber’s identifying information, and the SRC Allocation applicable to each such SRC Subscriber’s Subscription, reflecting each SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.13 “Photovoltaic Energy” shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.14 “Post-Bid Requirements” shall have the meaning set forth in the RFP.

1.15 “Production Meter” shall mean the measuring facility installed by Public Service pursuant to Section 5.2 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy and the associated RECs change possession from SRC Producer to Public Service.

1.16 “Production Month” shall mean the calendar month during which Photovoltaic Energy and associated RECs are produced by the PV System and delivered to Public Service at the Production Meter.

1.17 “PV System” shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy and associated RECs subject to this Agreement.

1.18 “PV System Owner” shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System.

1.19 “PVWATTS” shall mean the National Renewable Energy Laboratory’s PVWATTS Calculator, or any successor product or service.

1.20 “Renewable Energy Credit” or “REC” shall have the meaning set forth in 4 CCR 723-3-3652. In addition REC shall also mean the right to all non-energy and environmental attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the capacity available and/or energy generated by the PV system, including environmental air quality credits, tags and allowances created by law or regulation by virtue of the PV system’s environmentally favorable or renewable characteristics or attributes. “RECs” includes but is not limited to rights eligible for registration, trading and/or use under the Western Renewable Energy Generation Information System (“WREGIS”).

For the avoidance of doubt, a “REC” excludes (i) any local, state or federal production tax credit, depreciation deductions or other tax credits providing a tax benefit to SRC Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, including the investment tax credit expected to be available to SRC Producer or the owner of the PV System with respect to the PV System under Internal Revenue Code Section 48 (Energy Credits); (ii) any direct governmental grant or payment inuring to the benefit of SRC Producer or

the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, pursuant to Section 1603 of the American Recovery and Reinvestment Act, or other federal or state legislation; and (iii) depreciation and other tax benefits arising from ownership or operation of the PV System unrelated to its status as a generator of renewable or environmentally clean energy.

1.21 “RFP” shall mean the Public Service request for proposal regarding the purchase of Photovoltaic Energy and associated RECs from Community Solar Gardens that SRC Producer responded to with its SRC Bid.

1.22 “Rural” shall mean an area classified as “rural” by the United States Census Bureau as of the date of execution of this Agreement.

1.23 “Solar Garden Site” shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement, which may be updated by the mutual agreement of the Parties from time to time.

1.24 “Solar*Rewards Community Application and Subscriber Management System” or “SRC Application System” is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service’s Solar*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber’s allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$500 for each user that logs into to the SRC Application and Subscriber Management System. This number is subject to change in future contract cycles with the software platform vender. Checks should be made out to “Public Service Company of Colorado” and must be submitted with the SRC Producer Agreement.

1.25 “SRC Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber’s Subscription reflecting such SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.7 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.26 “SRC Application” shall have the meaning set forth in the RFP.

1.27 “SRC Bid” shall mean SRC Producer’s bid for the sale of Photovoltaic Energy and associated RECs from the PV System in response to the RFP.

1.28 “SRC Credit” shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber’s retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service’s Electric Tariffs.

1.29 “SRC Subscriber” shall mean the retail electric service customer of Public Service who: (a) owns a beneficial share of the Photovoltaic Energy and associated RECs produced by the PV System pursuant to a Subscription; (b) has attributed such Subscription to one or more premises served by Public Service where it is the customer of record; and (c) has entered into a SRC Subscriber Agency Agreement with SRC Producer.

1.30 “SRC Subscriber Agency Agreement” shall mean an agreement entered into between each SRC Subscriber and SRC Producer, in a form substantially the same as the SRC Subscriber Agency Agreement attached hereto as Exhibit B, by and through which each SRC Subscriber has authorized SRC Producer to act as SRC Subscriber’s agent for purposes of this Agreement, including, among other things, to sell SRC Subscriber’s beneficial share of Photovoltaic Energy and associated RECs generated by the PV System to Public Service.

1.31 “Subscription” shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

1.32 “Substantial Completion” shall mean the date that all construction and installation of the PV System is completed, and the PV System is ready to be commissioned at the full-agreed upon generation capacity, including, but not limited to, a set transformer, meter set request, and the SRC Producer having requested a scheduled witness test for the PV System.

1.33 “Urban” shall mean an area classified as “urban” by the United States Census Bureau as of the date of execution of this Agreement.

ARTICLE II TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS

2.1 Sale and Delivery of Subscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy and associated RECs produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System. Notwithstanding anything to the contrary, Public Service’s payment obligation set forth in Section 2.3, if applicable, and the SRC Credits (as an indirect inducement of SRC Subscribers to obtain Subscriptions from SRC Producer) are SRC Producer’s sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are attributable to Subscriptions.

2.2 SRC Credits.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy and associated RECs produced by the PV System shall be the full responsibility of the SRC Producer.

2.3 Positive Price and Payments to SRC Producer for Photovoltaic Energy and Associated RECs. The price to be paid by Public Service for the purchase of the Photovoltaic Energy and the associated RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. If the price to be paid is positive, as set forth in the SRC Bid, Public Service shall pay SRC Producer the price of \$ 48.61 per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Payments for such purchases shall be made monthly by check to SRC Producer for the Photovoltaic Energy and the associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.4 Negative Price and Option for One-Time Payment to Public Service for Photovoltaic Energy and Associated RECs. If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, Public Service and the SRC Producer may agree that the SRC Producer may make a one-time payment to Public Service of \$ N/A. Such payment shall be made by check to Public Service issued within thirty (30) days after the Date of Commercial Operation.

2.5 Negative Price and Payment(s) to Public Service. The price to be paid by SRC Producer to Public Service for acceptance of RECs shall be expressed in dollars per megawatt-hour (MWh). If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, SRC Producer shall pay Public Service the price of \$ N/A per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Unless otherwise paid in accordance with Section 2.4, payments shall be made by check to Public Service by SRC

Producer and shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.6 Purchase and Sale of Unsubscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy and associated RECs purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy and associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading. Notwithstanding anything to the contrary, Public Service's payment obligation set forth in this Section 2.6 is SRC Producer's sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are not attributable to Subscriptions.

2.7 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all RECs associated with such Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances.

2.8 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

ARTICLE III **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer warrants and covenants from and after the Date of Commercial Operation to Public Service as follows:

(a) SRC Producer will be either the PV System Owner or a subscriber organization organized under Section 40-2-127, C.R.S., duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.

(b) SRC Producer will be duly authorized to sell and deliver to Public Service Photovoltaic Energy and associated RECs produced by the PV System on behalf of all SRC Subscribers who then have valid Subscriptions in the PV System.

(c) SRC Producer will have the right and authority to sell the unsubscribed Photovoltaic Energy and associated RECs produced by the PV System to Public Service.

(d) SRC Producer will at all times have a designated primary application manager or other authorized representative, and such individual will have authority to act on behalf of SRC Producer (and Public Service will be entitled to rely on such individual's authority) for all actions contemplated by this Agreement, including payment direction to return the Deposit or escrowed funds under Sections 4.4 and 4.5.

(e) PV System Owner has authorized SRC Producer (which authorization has not been revoked, terminated or limited in any respect) to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions.
SRC Producer covenants and warrants during the Term as follows:

(a) No SRC Subscriber will, at any time following the Date of Commercial Operation, own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy and associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) SRC Producer shall ensure that each Subscription is sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises; provided that the minimum one kW sizing requirement herein will not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber will be a premise served by Public Service and will be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) Unless otherwise expressly agreed by Public Service in writing, SRC Producer shall allocate Subscriptions to the classes or categories of Subscribers set forth on Exhibit D, including, if applicable, Eligible Low-Income CSG Subscribers or residential rate class service customers (R, RE-TOU, RD, or RD-TDR), in the percentages of the SRC Allocation as set forth on Exhibit D (each percentage, a "Subscriber Mix Commitment"), and SRC Producer shall cause each such Subscriber Mix Commitment to be at least as great as the corresponding commitment set forth in the SRC Bid. If, at any time, SRC Producer fails to meet or exceed any Subscriber Mix Commitment, SRC Producer will only be entitled to payment at the unsubscribed energy and REC rate set forth in Section 2.6 for that portion of the SRC Allocation set aside or dedicated for the applicable Subscriber Mix Commitment that fails to meet such Subscriber Mix Commitment.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed will not be the generation of electricity for retail or wholesale sale.

In addition to any other rights and remedies set forth herein, (i) Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of SRC Producer's preceding requirements set forth in this Section 3.3 and (ii) if an SRC Allocation for any SRC Subscriber or Subscription no longer complies with the preceding requirements set forth in this Section 3.3 as determined in Public Service's discretion, then Public Service may treat such SRC Allocation as unsubscribed unless and until such all such requirements have been met with respect to such SRC Subscriber and such Subscription.

3.4 Requirements and Restrictions Applicable to the PV System. SRC Producer further covenants and warrants during the Term as follows:

(a) Following the Date of Commercial Operation, the PV System will have at least ten SRC Subscribers.

(b) The PV System will have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System will be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If the PV System is or will no longer be located within Public Service's existing service territory, then Public Service may terminate this Agreement, which termination

will be effective on the date of Public Service's written notice of such termination, or, if later, the date that the PV System is no longer located within Public Service's service territory.

(d) The location of CSGs will not result in more than 2 MWs of Commonly Owned total capacity of CSGs energized within a 0.5 mile distance as measured from point of interconnection to point of interconnection for Rural CSGs. In Urban areas the distance between points of interconnection between Commonly Owned CSGs will be maintained at 0.5 miles; however, the capacity allowed within this distance will be increased to 4.0 MW. Furthermore, each awarded CSG must be contained on its own legal parcel of land.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System will be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

In addition to any other rights and remedies set forth herein, Public Service may refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during any period that SRC Producer is not in compliance with the preceding requirements set forth in this Section 3.4.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be solely responsible for ensuring and shall ensure that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

ARTICLE IV

TERM, COMMERCIAL OPERATION AND PERFORMANCE

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, or expiration to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination or expiration and, as applicable, to provide for final billings and adjustments related to the period prior to termination or expiration, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

4.2 Project Development. Prior to the Date of Commercial Operation, SRC Producer agrees to (i) submit regular progress reports (and not fewer than semi-annually) to Company

including current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Date of Commercial Operation; (ii) provide copies of reports submitted to the PV System Lender relating to status, progress and development of the project, (iii) upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep the Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained. Upon request, the Company shall have the right to monitor the construction, start-up, testing, and operation of the PV System at the Solar Garden Site for compliance with this Agreement, the SRC Bid, the SRC Application, and the Post-Bid Requirements, *provided, however, that* Company shall comply with all of SRC Producer's reasonable and applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the PV System is authorized to operate by Public Service; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within ninety (90) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as the required Deposit in connection with its SRC Application; less any amounts deducted in accordance with Section 5.1. Notwithstanding the foregoing, if this Agreement is terminated for any reason other than Public Service's failure to perform or observe any material term or provision of this Agreement, then the Deposit shall become non-refundable and forfeited by SRC Producer to the Renewable Energy Standard Adjustment account.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3882(d) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3882, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged, destroyed or is otherwise out of operation, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy and associated RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to (a) the estimated annual generation of the PV System, as determined via PVWATTS, after applying an annual cell degradation factor of one percent (1%) each year (compounded) after the first year, multiplied by (b) the number of years or partial years remaining in the Term as of the effective date of such termination, and further multiplied by (c) the positive difference resulting, if any, by subtracting (i) the price per MWh to be paid (expressed as a negative number if SRC Producer is paying Public Service) for the Photovoltaic Energy and the associated RECs set forth in Sections 2.3 through 2.5, as applicable, from (ii) the weighted-average price per MWh for Photovoltaic Energy and associated RECs of the awarded bids under Public Service's most recent request for proposal under its Solar*Rewards Community Service program. In no event will the foregoing calculation be deemed to obligate Public Service to make any payment to SRC Producer. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that (i) the liquidated damages set forth herein are not a penalty and (ii) that Public Service's actual damages in the event of an SRC Producer default under this Section 4.6 would be difficult to ascertain and that the liquidated damages set forth herein adequately represent the Parties' best estimate of such damages.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy and associated RECs produced and delivered during such Production Month to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine

the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (*e.g.*, account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Review of Low-Income Qualification. The SRC Producer shall assist Public Service with verifying that any eligible low-income CSG subscriber, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, meets the requirements set forth in 4 CCR 723-3-3652(o). Assistance may include but is not limited to providing any documentation of low-income status as defined above or providing any contact information for the verifying agency or organization.

4.9 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. If the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. If the SRC Subscriber to which such SRC Allocation is attributable no longer meets the qualification of low income as defined under 4 CCR 723-3-3652(o) in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. Furthermore, until the remedy has occurred the SRC Producer will be paid at the rate described in Section 2.6 of this Agreement for any energy producer that is attributable to the applicable SRC Allocation.

4.10 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.11 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.12 No Relocation. Upon Commercial Operation, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.13 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.14 Request for Information. Until the Date of Commercial Operation, SRC Producer shall promptly provide (and no later than 10 days following the date of any request) Public Service with any and all information and documentation reasonably requested by Public Service regarding the current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, including, without limitation, any significant developments or delays along with an action plan for making up such delays and SRC Producer's best estimate of the date of Substantial Completion.

4.15 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

ARTICLE V

PRODUCTION METER AND INTERCONNECTION

5.1 Construction Timelines. The SRC Producer will have 24 months to bring the PV System to Substantial Completion from the date of notice that the SRC Bid was a winning bid (the "Target Completion Date"). If the PV System has not achieved Substantial Completion by the Target Completion Date, the Deposit will be forfeited to the Renewable Energy Standard Adjustment account in an amount equal to 1/180th of the Deposit per day for each day following the Target Completion Date that the PV System has not been brought to Substantial Completion, not to exceed the Deposit. If the PV System has not been brought to Substantial Completion after 30 months, Public Service will consider the PV System incomplete and have the right to remove it from the Solar*Rewards Community program with any associated capacity forfeited and terminate this Agreement which will be effective upon written notice to SRC Producer of such termination.

5.2 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and

read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.3 Telecommunications Equipment. SRC Producer shall cause to be provided, and shall own, operate and maintain at the SRC Producer's sole cost any necessary electronic communications equipment or devices that are required to provide Public Service real-time access to 15-minute interval data regarding the Photovoltaic Energy produced by the PV System. Unless otherwise notified in writing by Public Service that an alternative telecommunication device is acceptable, such equipment shall include an active, wired telephone or data line capable of transmitting the monthly 15-minute interval data to Public Service. Public Service reserves the right to replace the telecommunication equipment at its sole cost.

5.4 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.3 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. SRC Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.5 Interconnection Agreement. The Parties recognize that PV System Owner and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rules 3850 through 3859 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3850, *et. seq.*, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated August 6, 2020, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, (a) nothing in the Interconnection Agreement shall alter or modify SRC

Producer's or Public Service's rights, duties and obligations under this Agreement and (b) this Agreement may be terminated by Public Service in its sole discretion upon the termination of the Interconnection Agreement which will be effective upon written notice to SRC Producer of such termination. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.6 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.6. SRC Producer's right to self-generate hereunder shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

ARTICLE VI

FORCE MAJEURE

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC

Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy and associated RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend

such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the SRC Producer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

ARTICLE VII
DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Events of Default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below (an “Event of Default”):

(A) A breach by either Party of its material covenants or warranties set forth in this Agreement, that is not excused by Force Majeure, and such breach remaining unremedied for 30 Days after notice thereof having been given by the non-defaulting Party.

(B) Any representation or warranty made by SRC Producer in this Agreement, the SRC Bid, the SRC Application, or the Post-Bid Requirements, including without limitation representations or warranties regarding any characteristics or specifications of the PV System or any Subscriber Mix Commitment, being false or misleading in any material respect when made, or ceasing to remain materially true during the Term of this Agreement.

7.2 Prior to commencing any action to enforce this Agreement, the non-defaulting Party shall provide written notice of default to the Party asserted to be in default and the Party asserted to be in default shall have a period of thirty (30) days following receipt of such written notice within which to cure the asserted default (or if the asserted default is of a nature which cannot reasonably be cured within such 30-day period, to commence and thereafter diligently pursue a cure thereof.)

7.3 Failure of either Party to assert an Event of Default or to enforce any term or condition of this Agreement shall not constitute a waiver of any other similar or other default, or waiver of such term or condition or of any other term or condition of this Agreement. Each Party hereby irrevocably and unconditionally waives any right to a trial by jury for the resolution of any dispute arising under this Agreement.

7.4 If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the prevailing Party in any action brought for the purpose of enforcing such provisions shall be entitled to recover its reasonable attorney fees, expenses and costs of such action from the non-prevailing Party.

7.5 Upon an uncured Event of Default, the non-defaulting Party may terminate this Agreement immediately upon notice to the other Party and pursue any other remedy available to it under this Agreement or under law or in equity.

ARTICLE VIII
LIABILITY AND INDEMNIFICATION

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the tax, financial or legal consequences, if any, to SRC Producer with respect to the installation of the PV System or the production and sale of Photovoltaic Energy and associated RECs, and SRC Producer is urged to seek professional advice regarding these issues.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates (collectively “Indemnified Parties”) harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature (“Losses”) that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer’s administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

8.3 Indemnification by SRC Producer: Environmental. SRC Producer shall indemnify, defend and hold the Indemnified Parties harmless from and against all Losses arising out of any claim alleging Environmental Contamination at the Solar Garden Site and/or illegal disposal of Hazardous Materials off-site, regardless of merit and regardless of SRC Producer’s responsibility therefor.

ARTICLE IX
LAWS AND REGULATORY BODIES

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto (“Applicable Law”). Without limiting the generality of the foregoing and unless otherwise expressly stated to the contrary in the Colorado Revised Statutes or by an order or decision of the Commission or a rule promulgated by the Commission, the Parties acknowledge and agree that the rules set forth in 4 *Code of Colorado Regulations* 723-3-3665 (or any successor rule or rules of the Commission) and Public Service’s then current Renewable Energy Standard Compliance Plan, as approved by the Commission, as each of them exist as of the date of the RFP (the “Effective Time”) shall govern regardless of any changes, amendments, restatements, modifications, additions, or deletions of such rules or to such plan following the Effective Time.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over the PV System takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both Parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues

any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either Party (in that Party's reasonable good faith opinion), then the Party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other Party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other Party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other Party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that an electronic signature or a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld; provided, however, that Public Service may assign this Agreement to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the location of the PV System. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral

assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent to assignment, in form acceptable to Company, to any of SRC Producer's lenders requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy
Attn: Solar*Rewards Community
1800 Larimer St, 15th Floor
Denver, CO 80202
Fax: 1.800.252.4371

If to SRC Producer:

Jeff Hughes
McKinstry RDCS 1, LLC
4835 East Cactus Road, Ste 100
Scottsdale, AZ 85254

General Counsel
5005 3RD AVE S
SEATTLE, WA, 98134-2423

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, and the SRC Bid constitute the entire understanding and agreement between the Parties with respect to the PV System, and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto. In the event of any conflict or discrepancy between any information provided by SRC Producer in the SRC Bid and the corresponding information set forth herein, including without limitation any REC price, Subscriber Mix Commitment or Construction Milestone, the information in the SRC Bid shall control and shall be deemed to replace and supersede the corresponding information set forth herein, unless otherwise expressly agreed by Public Service in writing.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

SRC Producer

SRC Producer Name (printed): McKinstry RDCS 1, LLC

SRC Producer Representative: Jeff Hughes

Title: Director

Jeffrey Hughes

Digitally signed by Jeffrey Hughes
DN: C=US, E=jeffreyh@mcKinstry.com,
O="McKinstry ", OU=0560, CN=Jeffrey Hughes
Reason: I agree to the terms defined by the
placement of my signature on this document
Date: 2022.04.15 08:56:41-07'00'

SRC Producer Signature: _____ Date: _____

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

By: Lee Gabler Digitally signed by Lee Gabler
Date: 2022.04.28 08:42:12

Title: _____ -06'00'

Date: _____.

**As authorized agent for
Public Service Company of Colorado**

Solar Garden ID No. **SRC083134**

Exhibit A
to
Solar*Rewards Community Producer Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

CCD-CSG13-Harvard Gulch Rec Ctr
SRC083134
550 E Iliff Ave.
Denver, CO 80210

Exhibit B
to
Solar*Rewards Community Producer Agreement

**SRC SUBSCRIBER AGENCY AGREEMENT
FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)**

SRC Subscriber Name: _____

SRC Subscriber Retail Customer Account No.: _____

SRC Subscriber Service Address: _____

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: _____(Primary) _____(Alt.)

SRC Producer (Subscriber Organization) Name: _____

Solar Garden ID No: _____

Name and Location of Solar Garden: _____

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): _____ kW

The undersigned SRC Subscriber hereby authorizes _____ ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit

on any of SRC Subscriber’s electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber’s electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer’s execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber’s bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

1. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber’s agent with respect to SRC Subscriber’s beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber’s subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff.

2. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service’s receipt of notice that SRC Subscriber’s subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

4. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber’s knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

5. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed “Consent to Disclose Utility Customer Data” form granting consent for Public Service to share information regarding SRC Subscriber’s past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber’s eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the Xcel Energy website or the website of the Colorado Public Utilities Commission.

IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER

SRC PRODUCER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit C
to
Solar*Rewards Community Producer Agreement

Construction Milestones

DATE	RESULTS ACHIEVED
1	SRC Producer has submitted post bid information (10 subscribers, deposit/escrow, proposed site location, and low income subscriber summary).
2	The SRC Producer Agreement has been executed.
3	SRC Producer has received site acquisition/control.
4	Site Survey and soils report have been obtained.
5	SRC Producer has obtained all variance allowances and planning approval.
6	SRC Producer has obtained all required permits.
7	SRC Producer has achieved closing on financing for the PV System and the Solar Garden Site, if necessary, or has provided Public Service with proof of financial capability to construct the PV System.
8	SRC Producer and all required counterparties have executed major procurement contracts, the Construction Contract, and any operating agreements needed to commence construction of the PV System.
9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
10	The SRC Producer has started PV System construction.
11	SRC Producer has provided Public Service with copies of applicable inspection reports for the PV System.
12	SRC Producer has provided Public Service with evidence of complying with that insurance coverage required prior to the date of Substantial Completion.
13	SRC Producer shall have made the Interconnection of the CSG generating facility and is capable of being energized.
14	Substantial Completion has been achieved and the date duly recorded.

	15	All other SRC application documentation reasonably requested by Public Service is on file with Public Service.
	16	SRC Producer has Substantially Completed the PV System within 24 months of receiving an award.

Exhibit D
to
Solar*Rewards Community Producer Agreement
Subscriber Mix Commitment

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as Eligible Low-Income CSG Subscribers: 0 %

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as residential rate class service customers (R, RE-TOU, RD, or RD-TDR): 0 %

[]



Solar Garden ID No. **SRC083135**

Solar*Rewards Community Producer Agreement
Solar*Rewards Community Photovoltaic (PV) Systems
For SRC Producers

This Agreement is made and entered into this 15 day of April, 2022, by and between Public Service Company of Colorado, d/b/a/ Xcel Energy (“Public Service” or “Company”), a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202, **McKinstry RDCS 1, LLC** (“SRC Producer”), a **Washington Limited Liability Company** whose business address is **5005 3RD AVE S, SEATTLE, WA, 98134-2423**, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS:

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.25 below) with respect to the Photovoltaic Energy and associated Renewable Energy Credits (“RECs”) generated by the community solar garden photovoltaic solar system (the “PV System”) installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (AC) nameplate capacity of 210 kW. The PV System Owner (as defined in Section 1.15 below) has separately provided assurances to Public Service that SRC Producer has the power and authority to enter into this Agreement and perform its obligations hereunder, and that PV System Owner will promptly inform Public Service if SRC Producer no longer has such power and authority (and the identity of any assignee), which assurances are a material inducement to Public Service entering into this Agreement with SRC Producer.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

- 1.1 “Applicable Law” shall have the meaning set forth in Section 9.1 of this Agreement.
- 1.2 “Commission” shall mean the Public Utilities Commission of the State of Colorado.

1.3 “Commonly Owned” shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.4 “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.5 “Deposit” shall mean a security deposit in an amount equal to \$100/kW of the PV System’s Direct Current (DC) nameplate capacity.

1.6 “Electric Tariffs” shall mean Public Service’s electric tariffs as in effect and on file with the Commission from time to time.

1.7 “Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Solar Garden Site will not be available or usable for the purposes contemplated by this Agreement, and/or (iii) will preclude or interfere with SRC Producer’s ability to perform its obligations under this Agreement as and when due.

1.8 “Force Majeure” shall have the meaning set forth in Section 6.1 of this Agreement.

1.9 “Hazardous Material” means any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed or identified under, or which may form the basis for liability under Applicable Law, or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; per- and poly-fluoroalkyl substances; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing materials; medical waste; solid waste, and any excavated soil, debris, or groundwater that is contaminated with such materials.

1.10 “House Power” shall mean the supply of retail power for consumption at the Solar Garden Site.

1.11 “Interconnection Agreement” shall mean the separate agreement to be entered into between PV System Owner and Public Service providing the terms and conditions by which PV System Owner may interconnect and operate the PV System in parallel with Public Service’s electric distribution system at the Solar Garden Site.

1.12 “Monthly Subscription Information” shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.7 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber’s identifying information, and the SRC Allocation applicable to each such SRC Subscriber’s Subscription, reflecting each SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.13 “Photovoltaic Energy” shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.14 “Post-Bid Requirements” shall have the meaning set forth in the RFP.

1.15 “Production Meter” shall mean the measuring facility installed by Public Service pursuant to Section 5.2 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy and the associated RECs change possession from SRC Producer to Public Service.

1.16 “Production Month” shall mean the calendar month during which Photovoltaic Energy and associated RECs are produced by the PV System and delivered to Public Service at the Production Meter.

1.17 “PV System” shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy and associated RECs subject to this Agreement.

1.18 “PV System Owner” shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System.

1.19 “PVWATTS” shall mean the National Renewable Energy Laboratory’s PVWATTS Calculator, or any successor product or service.

1.20 “Renewable Energy Credit” or “REC” shall have the meaning set forth in 4 CCR 723-3-3652. In addition REC shall also mean the right to all non-energy and environmental attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the capacity available and/or energy generated by the PV system, including environmental air quality credits, tags and allowances created by law or regulation by virtue of the PV system’s environmentally favorable or renewable characteristics or attributes. “RECs” includes but is not limited to rights eligible for registration, trading and/or use under the Western Renewable Energy Generation Information System (“WREGIS”).

For the avoidance of doubt, a “REC” excludes (i) any local, state or federal production tax credit, depreciation deductions or other tax credits providing a tax benefit to SRC Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, including the investment tax credit expected to be available to SRC Producer or the owner of the PV System with respect to the PV System under Internal Revenue Code Section 48 (Energy Credits); (ii) any direct governmental grant or payment inuring to the benefit of SRC Producer or

the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, pursuant to Section 1603 of the American Recovery and Reinvestment Act, or other federal or state legislation; and (iii) depreciation and other tax benefits arising from ownership or operation of the PV System unrelated to its status as a generator of renewable or environmentally clean energy.

1.21 “RFP” shall mean the Public Service request for proposal regarding the purchase of Photovoltaic Energy and associated RECs from Community Solar Gardens that SRC Producer responded to with its SRC Bid.

1.22 “Rural” shall mean an area classified as “rural” by the United States Census Bureau as of the date of execution of this Agreement.

1.23 “Solar Garden Site” shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement, which may be updated by the mutual agreement of the Parties from time to time.

1.24 “Solar*Rewards Community Application and Subscriber Management System” or “SRC Application System” is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service’s Solar*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber’s allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$500 for each user that logs into to the SRC Application and Subscriber Management System. This number is subject to change in future contract cycles with the software platform vender. Checks should be made out to “Public Service Company of Colorado” and must be submitted with the SRC Producer Agreement.

1.25 “SRC Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber’s Subscription reflecting such SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.7 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.26 “SRC Application” shall have the meaning set forth in the RFP.

1.27 “SRC Bid” shall mean SRC Producer’s bid for the sale of Photovoltaic Energy and associated RECs from the PV System in response to the RFP.

1.28 “SRC Credit” shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber’s retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service’s Electric Tariffs.

1.29 “SRC Subscriber” shall mean the retail electric service customer of Public Service who: (a) owns a beneficial share of the Photovoltaic Energy and associated RECs produced by the PV System pursuant to a Subscription; (b) has attributed such Subscription to one or more premises served by Public Service where it is the customer of record; and (c) has entered into a SRC Subscriber Agency Agreement with SRC Producer.

1.30 “SRC Subscriber Agency Agreement” shall mean an agreement entered into between each SRC Subscriber and SRC Producer, in a form substantially the same as the SRC Subscriber Agency Agreement attached hereto as Exhibit B, by and through which each SRC Subscriber has authorized SRC Producer to act as SRC Subscriber’s agent for purposes of this Agreement, including, among other things, to sell SRC Subscriber’s beneficial share of Photovoltaic Energy and associated RECs generated by the PV System to Public Service.

1.31 “Subscription” shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

1.32 “Substantial Completion” shall mean the date that all construction and installation of the PV System is completed, and the PV System is ready to be commissioned at the full-agreed upon generation capacity, including, but not limited to, a set transformer, meter set request, and the SRC Producer having requested a scheduled witness test for the PV System.

1.33 “Urban” shall mean an area classified as “urban” by the United States Census Bureau as of the date of execution of this Agreement.

ARTICLE II TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS

2.1 Sale and Delivery of Subscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy and associated RECs produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System. Notwithstanding anything to the contrary, Public Service’s payment obligation set forth in Section 2.3, if applicable, and the SRC Credits (as an indirect inducement of SRC Subscribers to obtain Subscriptions from SRC Producer) are SRC Producer’s sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are attributable to Subscriptions.

2.2 SRC Credits.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy and associated RECs produced by the PV System shall be the full responsibility of the SRC Producer.

2.3 Positive Price and Payments to SRC Producer for Photovoltaic Energy and Associated RECs. The price to be paid by Public Service for the purchase of the Photovoltaic Energy and the associated RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. If the price to be paid is positive, as set forth in the SRC Bid, Public Service shall pay SRC Producer the price of \$ 48.61 per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Payments for such purchases shall be made monthly by check to SRC Producer for the Photovoltaic Energy and the associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.4 Negative Price and Option for One-Time Payment to Public Service for Photovoltaic Energy and Associated RECs. If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, Public Service and the SRC Producer may agree that the SRC Producer may make a one-time payment to Public Service of \$ N/A. Such payment shall be made by check to Public Service issued within thirty (30) days after the Date of Commercial Operation.

2.5 Negative Price and Payment(s) to Public Service. The price to be paid by SRC Producer to Public Service for acceptance of RECs shall be expressed in dollars per megawatt-hour (MWh). If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, SRC Producer shall pay Public Service the price of \$ N/A per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Unless otherwise paid in accordance with Section 2.4, payments shall be made by check to Public Service by SRC

Producer and shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.6 Purchase and Sale of Unsubscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy and associated RECs purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy and associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading. Notwithstanding anything to the contrary, Public Service's payment obligation set forth in this Section 2.6 is SRC Producer's sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are not attributable to Subscriptions.

2.7 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all RECs associated with such Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances.

2.8 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

ARTICLE III **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer warrants and covenants from and after the Date of Commercial Operation to Public Service as follows:

(a) SRC Producer will be either the PV System Owner or a subscriber organization organized under Section 40-2-127, C.R.S., duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.

(b) SRC Producer will be duly authorized to sell and deliver to Public Service Photovoltaic Energy and associated RECs produced by the PV System on behalf of all SRC Subscribers who then have valid Subscriptions in the PV System.

(c) SRC Producer will have the right and authority to sell the unsubscribed Photovoltaic Energy and associated RECs produced by the PV System to Public Service.

(d) SRC Producer will at all times have a designated primary application manager or other authorized representative, and such individual will have authority to act on behalf of SRC Producer (and Public Service will be entitled to rely on such individual's authority) for all actions contemplated by this Agreement, including payment direction to return the Deposit or escrowed funds under Sections 4.4 and 4.5.

(e) PV System Owner has authorized SRC Producer (which authorization has not been revoked, terminated or limited in any respect) to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions.
SRC Producer covenants and warrants during the Term as follows:

(a) No SRC Subscriber will, at any time following the Date of Commercial Operation, own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy and associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) SRC Producer shall ensure that each Subscription is sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises; provided that the minimum one kW sizing requirement herein will not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber will be a premise served by Public Service and will be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) Unless otherwise expressly agreed by Public Service in writing, SRC Producer shall allocate Subscriptions to the classes or categories of Subscribers set forth on Exhibit D, including, if applicable, Eligible Low-Income CSG Subscribers or residential rate class service customers (R, RE-TOU, RD, or RD-TDR), in the percentages of the SRC Allocation as set forth on Exhibit D (each percentage, a "Subscriber Mix Commitment"), and SRC Producer shall cause each such Subscriber Mix Commitment to be at least as great as the corresponding commitment set forth in the SRC Bid. If, at any time, SRC Producer fails to meet or exceed any Subscriber Mix Commitment, SRC Producer will only be entitled to payment at the unsubscribed energy and REC rate set forth in Section 2.6 for that portion of the SRC Allocation set aside or dedicated for the applicable Subscriber Mix Commitment that fails to meet such Subscriber Mix Commitment.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed will not be the generation of electricity for retail or wholesale sale.

In addition to any other rights and remedies set forth herein, (i) Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of SRC Producer's preceding requirements set forth in this Section 3.3 and (ii) if an SRC Allocation for any SRC Subscriber or Subscription no longer complies with the preceding requirements set forth in this Section 3.3 as determined in Public Service's discretion, then Public Service may treat such SRC Allocation as unsubscribed unless and until such all such requirements have been met with respect to such SRC Subscriber and such Subscription.

3.4 Requirements and Restrictions Applicable to the PV System. SRC Producer further covenants and warrants during the Term as follows:

(a) Following the Date of Commercial Operation, the PV System will have at least ten SRC Subscribers.

(b) The PV System will have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System will be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If the PV System is or will no longer be located within Public Service's existing service territory, then Public Service may terminate this Agreement, which termination

will be effective on the date of Public Service's written notice of such termination, or, if later, the date that the PV System is no longer located within Public Service's service territory.

(d) The location of CSGs will not result in more than 2 MWs of Commonly Owned total capacity of CSGs energized within a 0.5 mile distance as measured from point of interconnection to point of interconnection for Rural CSGs. In Urban areas the distance between points of interconnection between Commonly Owned CSGs will be maintained at 0.5 miles; however, the capacity allowed within this distance will be increased to 4.0 MW. Furthermore, each awarded CSG must be contained on its own legal parcel of land.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System will be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

In addition to any other rights and remedies set forth herein, Public Service may refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during any period that SRC Producer is not in compliance with the preceding requirements set forth in this Section 3.4.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be solely responsible for ensuring and shall ensure that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

ARTICLE IV

TERM, COMMERCIAL OPERATION AND PERFORMANCE

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, or expiration to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination or expiration and, as applicable, to provide for final billings and adjustments related to the period prior to termination or expiration, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

4.2 Project Development. Prior to the Date of Commercial Operation, SRC Producer agrees to (i) submit regular progress reports (and not fewer than semi-annually) to Company

including current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Date of Commercial Operation; (ii) provide copies of reports submitted to the PV System Lender relating to status, progress and development of the project, (iii) upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep the Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained. Upon request, the Company shall have the right to monitor the construction, start-up, testing, and operation of the PV System at the Solar Garden Site for compliance with this Agreement, the SRC Bid, the SRC Application, and the Post-Bid Requirements, *provided, however, that* Company shall comply with all of SRC Producer's reasonable and applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the PV System is authorized to operate by Public Service; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within ninety (90) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as the required Deposit in connection with its SRC Application; less any amounts deducted in accordance with Section 5.1. Notwithstanding the foregoing, if this Agreement is terminated for any reason other than Public Service's failure to perform or observe any material term or provision of this Agreement, then the Deposit shall become non-refundable and forfeited by SRC Producer to the Renewable Energy Standard Adjustment account.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3882(d) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3882, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged, destroyed or is otherwise out of operation, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy and associated RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to (a) the estimated annual generation of the PV System, as determined via PVWATTS, after applying an annual cell degradation factor of one percent (1%) each year (compounded) after the first year, multiplied by (b) the number of years or partial years remaining in the Term as of the effective date of such termination, and further multiplied by (c) the positive difference resulting, if any, by subtracting (i) the price per MWh to be paid (expressed as a negative number if SRC Producer is paying Public Service) for the Photovoltaic Energy and the associated RECs set forth in Sections 2.3 through 2.5, as applicable, from (ii) the weighted-average price per MWh for Photovoltaic Energy and associated RECs of the awarded bids under Public Service's most recent request for proposal under its Solar*Rewards Community Service program. In no event will the foregoing calculation be deemed to obligate Public Service to make any payment to SRC Producer. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that (i) the liquidated damages set forth herein are not a penalty and (ii) that Public Service's actual damages in the event of an SRC Producer default under this Section 4.6 would be difficult to ascertain and that the liquidated damages set forth herein adequately represent the Parties' best estimate of such damages.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy and associated RECs produced and delivered during such Production Month to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine

the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (*e.g.*, account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Review of Low-Income Qualification. The SRC Producer shall assist Public Service with verifying that any eligible low-income CSG subscriber, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, meets the requirements set forth in 4 CCR 723-3-3652(o). Assistance may include but is not limited to providing any documentation of low-income status as defined above or providing any contact information for the verifying agency or organization.

4.9 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. If the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. If the SRC Subscriber to which such SRC Allocation is attributable no longer meets the qualification of low income as defined under 4 CCR 723-3-3652(o) in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. Furthermore, until the remedy has occurred the SRC Producer will be paid at the rate described in Section 2.6 of this Agreement for any energy producer that is attributable to the applicable SRC Allocation.

4.10 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.11 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.12 No Relocation. Upon Commercial Operation, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.13 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.14 Request for Information. Until the Date of Commercial Operation, SRC Producer shall promptly provide (and no later than 10 days following the date of any request) Public Service with any and all information and documentation reasonably requested by Public Service regarding the current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, including, without limitation, any significant developments or delays along with an action plan for making up such delays and SRC Producer's best estimate of the date of Substantial Completion.

4.15 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

ARTICLE V

PRODUCTION METER AND INTERCONNECTION

5.1 Construction Timelines. The SRC Producer will have 24 months to bring the PV System to Substantial Completion from the date of notice that the SRC Bid was a winning bid (the "Target Completion Date"). If the PV System has not achieved Substantial Completion by the Target Completion Date, the Deposit will be forfeited to the Renewable Energy Standard Adjustment account in an amount equal to 1/180th of the Deposit per day for each day following the Target Completion Date that the PV System has not been brought to Substantial Completion, not to exceed the Deposit. If the PV System has not been brought to Substantial Completion after 30 months, Public Service will consider the PV System incomplete and have the right to remove it from the Solar*Rewards Community program with any associated capacity forfeited and terminate this Agreement which will be effective upon written notice to SRC Producer of such termination.

5.2 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and

read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.3 Telecommunications Equipment. SRC Producer shall cause to be provided, and shall own, operate and maintain at the SRC Producer's sole cost any necessary electronic communications equipment or devices that are required to provide Public Service real-time access to 15-minute interval data regarding the Photovoltaic Energy produced by the PV System. Unless otherwise notified in writing by Public Service that an alternative telecommunication device is acceptable, such equipment shall include an active, wired telephone or data line capable of transmitting the monthly 15-minute interval data to Public Service. Public Service reserves the right to replace the telecommunication equipment at its sole cost.

5.4 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.3 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. SRC Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.5 Interconnection Agreement. The Parties recognize that PV System Owner and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rules 3850 through 3859 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3850, *et. seq.*, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated August 6, 2020, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, (a) nothing in the Interconnection Agreement shall alter or modify SRC

Producer's or Public Service's rights, duties and obligations under this Agreement and (b) this Agreement may be terminated by Public Service in its sole discretion upon the termination of the Interconnection Agreement which will be effective upon written notice to SRC Producer of such termination. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.6 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.6. SRC Producer's right to self-generate hereunder shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

ARTICLE VI

FORCE MAJEURE

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC

Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy and associated RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend

such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the SRC Producer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

ARTICLE VII
DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Events of Default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below (an “Event of Default”):

(A) A breach by either Party of its material covenants or warranties set forth in this Agreement, that is not excused by Force Majeure, and such breach remaining unremedied for 30 Days after notice thereof having been given by the non-defaulting Party.

(B) Any representation or warranty made by SRC Producer in this Agreement, the SRC Bid, the SRC Application, or the Post-Bid Requirements, including without limitation representations or warranties regarding any characteristics or specifications of the PV System or any Subscriber Mix Commitment, being false or misleading in any material respect when made, or ceasing to remain materially true during the Term of this Agreement.

7.2 Prior to commencing any action to enforce this Agreement, the non-defaulting Party shall provide written notice of default to the Party asserted to be in default and the Party asserted to be in default shall have a period of thirty (30) days following receipt of such written notice within which to cure the asserted default (or if the asserted default is of a nature which cannot reasonably be cured within such 30-day period, to commence and thereafter diligently pursue a cure thereof.)

7.3 Failure of either Party to assert an Event of Default or to enforce any term or condition of this Agreement shall not constitute a waiver of any other similar or other default, or waiver of such term or condition or of any other term or condition of this Agreement. Each Party hereby irrevocably and unconditionally waives any right to a trial by jury for the resolution of any dispute arising under this Agreement.

7.4 If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the prevailing Party in any action brought for the purpose of enforcing such provisions shall be entitled to recover its reasonable attorney fees, expenses and costs of such action from the non-prevailing Party.

7.5 Upon an uncured Event of Default, the non-defaulting Party may terminate this Agreement immediately upon notice to the other Party and pursue any other remedy available to it under this Agreement or under law or in equity.

ARTICLE VIII
LIABILITY AND INDEMNIFICATION

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the tax, financial or legal consequences, if any, to SRC Producer with respect to the installation of the PV System or the production and sale of Photovoltaic Energy and associated RECs, and SRC Producer is urged to seek professional advice regarding these issues.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates (collectively “Indemnified Parties”) harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature (“Losses”) that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer’s administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

8.3 Indemnification by SRC Producer: Environmental. SRC Producer shall indemnify, defend and hold the Indemnified Parties harmless from and against all Losses arising out of any claim alleging Environmental Contamination at the Solar Garden Site and/or illegal disposal of Hazardous Materials off-site, regardless of merit and regardless of SRC Producer’s responsibility therefor.

ARTICLE IX
LAWS AND REGULATORY BODIES

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto (“Applicable Law”). Without limiting the generality of the foregoing and unless otherwise expressly stated to the contrary in the Colorado Revised Statutes or by an order or decision of the Commission or a rule promulgated by the Commission, the Parties acknowledge and agree that the rules set forth in 4 *Code of Colorado Regulations* 723-3-3665 (or any successor rule or rules of the Commission) and Public Service’s then current Renewable Energy Standard Compliance Plan, as approved by the Commission, as each of them exist as of the date of the RFP (the “Effective Time”) shall govern regardless of any changes, amendments, restatements, modifications, additions, or deletions of such rules or to such plan following the Effective Time.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over the PV System takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both Parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues

any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either Party (in that Party's reasonable good faith opinion), then the Party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other Party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other Party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other Party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that an electronic signature or a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld; provided, however, that Public Service may assign this Agreement to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the location of the PV System. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral

assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent to assignment, in form acceptable to Company, to any of SRC Producer's lenders requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy
Attn: Solar*Rewards Community
1800 Larimer St, 15th Floor
Denver, CO 80202
Fax: 1.800.252.4371

If to SRC Producer:

Jeff Hughes
McKinstry RDCS 1, LLC
4835 East Cactus Road, Ste 100
Scottsdale, AZ 85254

General Counsel
5005 3RD AVE S
SEATTLE, WA, 98134-2423

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, and the SRC Bid constitute the entire understanding and agreement between the Parties with respect to the PV System, and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto. In the event of any conflict or discrepancy between any information provided by SRC Producer in the SRC Bid and the corresponding information set forth herein, including without limitation any REC price, Subscriber Mix Commitment or Construction Milestone, the information in the SRC Bid shall control and shall be deemed to replace and supersede the corresponding information set forth herein, unless otherwise expressly agreed by Public Service in writing.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

SRC Producer

SRC Producer Name (printed): McKinstry RDCS 1, LLC

SRC Producer Representative: Jeff Hughes

Title: Director

Jeffrey Hughes

Digitally signed by Jeffrey Hughes
DN: C=US, E=jeffreyh@mckinstry.com,
O="McKinstry", OU=0560, CN=Jeffrey Hughes
Reason: I agree to the terms defined by the
placement of my signature on this document
Date: 2022.04.15 08:57:14-07'00

SRC Producer Signature: _____ Date: _____

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

By: Lee Gabler Digitally signed by Lee Gabler
Date: 2022.04.28 08:43:51
Title: _____ -06'00'

Date: _____.

**As authorized agent for
Public Service Company of Colorado**

Solar Garden ID No. **SRC083135**

Exhibit A
to
Solar*Rewards Community Producer Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

CCD-CSG15-NWC SYEC
SRC083135
5004 Packing House Rd.
Denver, CO 80216

Exhibit B
to
Solar*Rewards Community Producer Agreement

**SRC SUBSCRIBER AGENCY AGREEMENT
FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)**

SRC Subscriber Name: _____

SRC Subscriber Retail Customer Account No.: _____

SRC Subscriber Service Address: _____

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: _____(Primary) _____(Alt.)

SRC Producer (Subscriber Organization) Name: _____

Solar Garden ID No: _____

Name and Location of Solar Garden: _____

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): _____ kW

The undersigned SRC Subscriber hereby authorizes _____ ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit

on any of SRC Subscriber’s electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber’s electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer’s execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber’s bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

1. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber’s agent with respect to SRC Subscriber’s beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber’s subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff.

2. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service’s receipt of notice that SRC Subscriber’s subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

4. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber’s knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

5. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed “Consent to Disclose Utility Customer Data” form granting consent for Public Service to share information regarding SRC Subscriber’s past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber’s eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the Xcel Energy website or the website of the Colorado Public Utilities Commission.

IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER

SRC PRODUCER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit C
to
Solar*Rewards Community Producer Agreement

Construction Milestones

DATE	RESULTS ACHIEVED
1	SRC Producer has submitted post bid information (10 subscribers, deposit/escrow, proposed site location, and low income subscriber summary).
2	The SRC Producer Agreement has been executed.
3	SRC Producer has received site acquisition/control.
4	Site Survey and soils report have been obtained.
5	SRC Producer has obtained all variance allowances and planning approval.
6	SRC Producer has obtained all required permits.
7	SRC Producer has achieved closing on financing for the PV System and the Solar Garden Site, if necessary, or has provided Public Service with proof of financial capability to construct the PV System.
8	SRC Producer and all required counterparties have executed major procurement contracts, the Construction Contract, and any operating agreements needed to commence construction of the PV System.
9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
10	The SRC Producer has started PV System construction.
11	SRC Producer has provided Public Service with copies of applicable inspection reports for the PV System.
12	SRC Producer has provided Public Service with evidence of complying with that insurance coverage required prior to the date of Substantial Completion.
13	SRC Producer shall have made the Interconnection of the CSG generating facility and is capable of being energized.
14	Substantial Completion has been achieved and the date duly recorded.

	15	All other SRC application documentation reasonably requested by Public Service is on file with Public Service.
	16	SRC Producer has Substantially Completed the PV System within 24 months of receiving an award.

Exhibit D
to
Solar*Rewards Community Producer Agreement
Subscriber Mix Commitment

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as Eligible Low-Income CSG Subscribers: 0 %

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as residential rate class service customers (R, RE-TOU, RD, or RD-TDR): 0 %

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Solar Garden ID No. **SRC083136**

Solar*Rewards Community Producer Agreement
Solar*Rewards Community Photovoltaic (PV) Systems
For SRC Producers

This Agreement is made and entered into this 15 day of April, 2022, by and between Public Service Company of Colorado, d/b/a/ Xcel Energy (“Public Service” or “Company”), a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202, and **McKinstry RDCS 1, LLC** (“SRC Producer”), a **Washington Limited Liability Company** whose business address is **5005 3RD AVE S, SEATTLE, WA, 98134-2423**, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS:

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.25 below) with respect to the Photovoltaic Energy and associated Renewable Energy Credits (“RECs”) generated by the community solar garden photovoltaic solar system (the “PV System”) installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (AC) nameplate capacity of 500 kW. The PV System Owner (as defined in Section 1.15 below) has separately provided assurances to Public Service that SRC Producer has the power and authority to enter into this Agreement and perform its obligations hereunder, and that PV System Owner will promptly inform Public Service if SRC Producer no longer has such power and authority (and the identity of any assignee), which assurances are a material inducement to Public Service entering into this Agreement with SRC Producer.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

- 1.1 “Applicable Law” shall have the meaning set forth in Section 9.1 of this Agreement.
- 1.2 “Commission” shall mean the Public Utilities Commission of the State of Colorado.

1.3 “Commonly Owned” shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.4 “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.5 “Deposit” shall mean a security deposit in an amount equal to \$100/kW of the PV System’s Direct Current (DC) nameplate capacity.

1.6 “Electric Tariffs” shall mean Public Service’s electric tariffs as in effect and on file with the Commission from time to time.

1.7 “Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Solar Garden Site will not be available or usable for the purposes contemplated by this Agreement, and/or (iii) will preclude or interfere with SRC Producer’s ability to perform its obligations under this Agreement as and when due.

1.8 “Force Majeure” shall have the meaning set forth in Section 6.1 of this Agreement.

1.9 “Hazardous Material” means any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed or identified under, or which may form the basis for liability under Applicable Law, or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; per- and poly-fluoroalkyl substances; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing materials; medical waste; solid waste, and any excavated soil, debris, or groundwater that is contaminated with such materials.

1.10 “House Power” shall mean the supply of retail power for consumption at the Solar Garden Site.

1.11 “Interconnection Agreement” shall mean the separate agreement to be entered into between PV System Owner and Public Service providing the terms and conditions by which PV System Owner may interconnect and operate the PV System in parallel with Public Service’s electric distribution system at the Solar Garden Site.

1.12 “Monthly Subscription Information” shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.7 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber’s identifying information, and the SRC Allocation applicable to each such SRC Subscriber’s Subscription, reflecting each SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.13 “Photovoltaic Energy” shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.14 “Post-Bid Requirements” shall have the meaning set forth in the RFP.

1.15 “Production Meter” shall mean the measuring facility installed by Public Service pursuant to Section 5.2 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy and the associated RECs change possession from SRC Producer to Public Service.

1.16 “Production Month” shall mean the calendar month during which Photovoltaic Energy and associated RECs are produced by the PV System and delivered to Public Service at the Production Meter.

1.17 “PV System” shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy and associated RECs subject to this Agreement.

1.18 “PV System Owner” shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System.

1.19 “PVWATTS” shall mean the National Renewable Energy Laboratory’s PVWATTS Calculator, or any successor product or service.

1.20 “Renewable Energy Credit” or “REC” shall have the meaning set forth in 4 CCR 723-3-3652. In addition REC shall also mean the right to all non-energy and environmental attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the capacity available and/or energy generated by the PV system, including environmental air quality credits, tags and allowances created by law or regulation by virtue of the PV system’s environmentally favorable or renewable characteristics or attributes. “RECs” includes but is not limited to rights eligible for registration, trading and/or use under the Western Renewable Energy Generation Information System (“WREGIS”).

For the avoidance of doubt, a “REC” excludes (i) any local, state or federal production tax credit, depreciation deductions or other tax credits providing a tax benefit to SRC Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, including the investment tax credit expected to be available to SRC Producer or the owner of the PV System with respect to the PV System under Internal Revenue Code Section 48 (Energy Credits); (ii) any direct governmental grant or payment inuring to the benefit of SRC Producer or

the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, pursuant to Section 1603 of the American Recovery and Reinvestment Act, or other federal or state legislation; and (iii) depreciation and other tax benefits arising from ownership or operation of the PV System unrelated to its status as a generator of renewable or environmentally clean energy.

1.21 “RFP” shall mean the Public Service request for proposal regarding the purchase of Photovoltaic Energy and associated RECs from Community Solar Gardens that SRC Producer responded to with its SRC Bid.

1.22 “Rural” shall mean an area classified as “rural” by the United States Census Bureau as of the date of execution of this Agreement.

1.23 “Solar Garden Site” shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement, which may be updated by the mutual agreement of the Parties from time to time.

1.24 “Solar*Rewards Community Application and Subscriber Management System” or “SRC Application System” is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service’s Solar*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber’s allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$500 for each user that logs into to the SRC Application and Subscriber Management System. This number is subject to change in future contract cycles with the software platform vender. Checks should be made out to “Public Service Company of Colorado” and must be submitted with the SRC Producer Agreement.

1.25 “SRC Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber’s Subscription reflecting such SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.7 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.26 “SRC Application” shall have the meaning set forth in the RFP.

1.27 “SRC Bid” shall mean SRC Producer’s bid for the sale of Photovoltaic Energy and associated RECs from the PV System in response to the RFP.

1.28 “SRC Credit” shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber’s retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service’s Electric Tariffs.

1.29 “SRC Subscriber” shall mean the retail electric service customer of Public Service who: (a) owns a beneficial share of the Photovoltaic Energy and associated RECs produced by the PV System pursuant to a Subscription; (b) has attributed such Subscription to one or more premises served by Public Service where it is the customer of record; and (c) has entered into a SRC Subscriber Agency Agreement with SRC Producer.

1.30 “SRC Subscriber Agency Agreement” shall mean an agreement entered into between each SRC Subscriber and SRC Producer, in a form substantially the same as the SRC Subscriber Agency Agreement attached hereto as Exhibit B, by and through which each SRC Subscriber has authorized SRC Producer to act as SRC Subscriber’s agent for purposes of this Agreement, including, among other things, to sell SRC Subscriber’s beneficial share of Photovoltaic Energy and associated RECs generated by the PV System to Public Service.

1.31 “Subscription” shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

1.32 “Substantial Completion” shall mean the date that all construction and installation of the PV System is completed, and the PV System is ready to be commissioned at the full-agreed upon generation capacity, including, but not limited to, a set transformer, meter set request, and the SRC Producer having requested a scheduled witness test for the PV System.

1.33 “Urban” shall mean an area classified as “urban” by the United States Census Bureau as of the date of execution of this Agreement.

ARTICLE II TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS

2.1 Sale and Delivery of Subscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy and associated RECs produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System. Notwithstanding anything to the contrary, Public Service’s payment obligation set forth in Section 2.3, if applicable, and the SRC Credits (as an indirect inducement of SRC Subscribers to obtain Subscriptions from SRC Producer) are SRC Producer’s sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are attributable to Subscriptions.

2.2 SRC Credits.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy and associated RECs produced by the PV System shall be the full responsibility of the SRC Producer.

2.3 Positive Price and Payments to SRC Producer for Photovoltaic Energy and Associated RECs. The price to be paid by Public Service for the purchase of the Photovoltaic Energy and the associated RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. If the price to be paid is positive, as set forth in the SRC Bid, Public Service shall pay SRC Producer the price of \$ 48.61 per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Payments for such purchases shall be made monthly by check to SRC Producer for the Photovoltaic Energy and the associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.4 Negative Price and Option for One-Time Payment to Public Service for Photovoltaic Energy and Associated RECs. If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, Public Service and the SRC Producer may agree that the SRC Producer may make a one-time payment to Public Service of \$ N/A. Such payment shall be made by check to Public Service issued within thirty (30) days after the Date of Commercial Operation.

2.5 Negative Price and Payment(s) to Public Service. The price to be paid by SRC Producer to Public Service for acceptance of RECs shall be expressed in dollars per megawatt-hour (MWh). If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, SRC Producer shall pay Public Service the price of \$ N/A per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Unless otherwise paid in accordance with Section 2.4, payments shall be made by check to Public Service by SRC

Producer and shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.6 Purchase and Sale of Unsubscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy and associated RECs purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy and associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading. Notwithstanding anything to the contrary, Public Service's payment obligation set forth in this Section 2.6 is SRC Producer's sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are not attributable to Subscriptions.

2.7 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all RECs associated with such Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances.

2.8 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

ARTICLE III **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer warrants and covenants from and after the Date of Commercial Operation to Public Service as follows:

(a) SRC Producer will be either the PV System Owner or a subscriber organization organized under Section 40-2-127, C.R.S., duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.

(b) SRC Producer will be duly authorized to sell and deliver to Public Service Photovoltaic Energy and associated RECs produced by the PV System on behalf of all SRC Subscribers who then have valid Subscriptions in the PV System.

(c) SRC Producer will have the right and authority to sell the unsubscribed Photovoltaic Energy and associated RECs produced by the PV System to Public Service.

(d) SRC Producer will at all times have a designated primary application manager or other authorized representative, and such individual will have authority to act on behalf of SRC Producer (and Public Service will be entitled to rely on such individual's authority) for all actions contemplated by this Agreement, including payment direction to return the Deposit or escrowed funds under Sections 4.4 and 4.5.

(e) PV System Owner has authorized SRC Producer (which authorization has not been revoked, terminated or limited in any respect) to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions.
SRC Producer covenants and warrants during the Term as follows:

(a) No SRC Subscriber will, at any time following the Date of Commercial Operation, own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy and associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) SRC Producer shall ensure that each Subscription is sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises; provided that the minimum one kW sizing requirement herein will not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber will be a premise served by Public Service and will be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) Unless otherwise expressly agreed by Public Service in writing, SRC Producer shall allocate Subscriptions to the classes or categories of Subscribers set forth on Exhibit D, including, if applicable, Eligible Low-Income CSG Subscribers or residential rate class service customers (R, RE-TOU, RD, or RD-TDR), in the percentages of the SRC Allocation as set forth on Exhibit D (each percentage, a "Subscriber Mix Commitment"), and SRC Producer shall cause each such Subscriber Mix Commitment to be at least as great as the corresponding commitment set forth in the SRC Bid. If, at any time, SRC Producer fails to meet or exceed any Subscriber Mix Commitment, SRC Producer will only be entitled to payment at the unsubscribed energy and REC rate set forth in Section 2.6 for that portion of the SRC Allocation set aside or dedicated for the applicable Subscriber Mix Commitment that fails to meet such Subscriber Mix Commitment.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed will not be the generation of electricity for retail or wholesale sale.

In addition to any other rights and remedies set forth herein, (i) Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of SRC Producer's preceding requirements set forth in this Section 3.3 and (ii) if an SRC Allocation for any SRC Subscriber or Subscription no longer complies with the preceding requirements set forth in this Section 3.3 as determined in Public Service's discretion, then Public Service may treat such SRC Allocation as unsubscribed unless and until such all such requirements have been met with respect to such SRC Subscriber and such Subscription.

3.4 Requirements and Restrictions Applicable to the PV System. SRC Producer further covenants and warrants during the Term as follows:

(a) Following the Date of Commercial Operation, the PV System will have at least ten SRC Subscribers.

(b) The PV System will have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System will be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If the PV System is or will no longer be located within Public Service's existing service territory, then Public Service may terminate this Agreement, which termination

will be effective on the date of Public Service's written notice of such termination, or, if later, the date that the PV System is no longer located within Public Service's service territory.

(d) The location of CSGs will not result in more than 2 MWs of Commonly Owned total capacity of CSGs energized within a 0.5 mile distance as measured from point of interconnection to point of interconnection for Rural CSGs. In Urban areas the distance between points of interconnection between Commonly Owned CSGs will be maintained at 0.5 miles; however, the capacity allowed within this distance will be increased to 4.0 MW. Furthermore, each awarded CSG must be contained on its own legal parcel of land.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System will be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

In addition to any other rights and remedies set forth herein, Public Service may refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during any period that SRC Producer is not in compliance with the preceding requirements set forth in this Section 3.4.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be solely responsible for ensuring and shall ensure that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

ARTICLE IV

TERM, COMMERCIAL OPERATION AND PERFORMANCE

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, or expiration to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination or expiration and, as applicable, to provide for final billings and adjustments related to the period prior to termination or expiration, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

4.2 Project Development. Prior to the Date of Commercial Operation, SRC Producer agrees to (i) submit regular progress reports (and not fewer than semi-annually) to Company

including current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Date of Commercial Operation; (ii) provide copies of reports submitted to the PV System Lender relating to status, progress and development of the project, (iii) upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep the Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained. Upon request, the Company shall have the right to monitor the construction, start-up, testing, and operation of the PV System at the Solar Garden Site for compliance with this Agreement, the SRC Bid, the SRC Application, and the Post-Bid Requirements, *provided, however, that* Company shall comply with all of SRC Producer's reasonable and applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the PV System is authorized to operate by Public Service; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within ninety (90) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as the required Deposit in connection with its SRC Application; less any amounts deducted in accordance with Section 5.1. Notwithstanding the foregoing, if this Agreement is terminated for any reason other than Public Service's failure to perform or observe any material term or provision of this Agreement, then the Deposit shall become non-refundable and forfeited by SRC Producer to the Renewable Energy Standard Adjustment account.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3882(d) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3882, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged, destroyed or is otherwise out of operation, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy and associated RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to (a) the estimated annual generation of the PV System, as determined via PVWATTS, after applying an annual cell degradation factor of one percent (1%) each year (compounded) after the first year, multiplied by (b) the number of years or partial years remaining in the Term as of the effective date of such termination, and further multiplied by (c) the positive difference resulting, if any, by subtracting (i) the price per MWh to be paid (expressed as a negative number if SRC Producer is paying Public Service) for the Photovoltaic Energy and the associated RECs set forth in Sections 2.3 through 2.5, as applicable, from (ii) the weighted-average price per MWh for Photovoltaic Energy and associated RECs of the awarded bids under Public Service's most recent request for proposal under its Solar*Rewards Community Service program. In no event will the foregoing calculation be deemed to obligate Public Service to make any payment to SRC Producer. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that (i) the liquidated damages set forth herein are not a penalty and (ii) that Public Service's actual damages in the event of an SRC Producer default under this Section 4.6 would be difficult to ascertain and that the liquidated damages set forth herein adequately represent the Parties' best estimate of such damages.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy and associated RECs produced and delivered during such Production Month to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine

the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (*e.g.*, account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Review of Low-Income Qualification. The SRC Producer shall assist Public Service with verifying that any eligible low-income CSG subscriber, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, meets the requirements set forth in 4 CCR 723-3-3652(o). Assistance may include but is not limited to providing any documentation of low-income status as defined above or providing any contact information for the verifying agency or organization.

4.9 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. If the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. If the SRC Subscriber to which such SRC Allocation is attributable no longer meets the qualification of low income as defined under 4 CCR 723-3-3652(o) in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. Furthermore, until the remedy has occurred the SRC Producer will be paid at the rate described in Section 2.6 of this Agreement for any energy producer that is attributable to the applicable SRC Allocation.

4.10 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.11 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.12 No Relocation. Upon Commercial Operation, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.13 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.14 Request for Information. Until the Date of Commercial Operation, SRC Producer shall promptly provide (and no later than 10 days following the date of any request) Public Service with any and all information and documentation reasonably requested by Public Service regarding the current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, including, without limitation, any significant developments or delays along with an action plan for making up such delays and SRC Producer's best estimate of the date of Substantial Completion.

4.15 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

ARTICLE V

PRODUCTION METER AND INTERCONNECTION

5.1 Construction Timelines. The SRC Producer will have 24 months to bring the PV System to Substantial Completion from the date of notice that the SRC Bid was a winning bid (the "Target Completion Date"). If the PV System has not achieved Substantial Completion by the Target Completion Date, the Deposit will be forfeited to the Renewable Energy Standard Adjustment account in an amount equal to 1/180th of the Deposit per day for each day following the Target Completion Date that the PV System has not been brought to Substantial Completion, not to exceed the Deposit. If the PV System has not been brought to Substantial Completion after 30 months, Public Service will consider the PV System incomplete and have the right to remove it from the Solar*Rewards Community program with any associated capacity forfeited and terminate this Agreement which will be effective upon written notice to SRC Producer of such termination.

5.2 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and

read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.3 Telecommunications Equipment. SRC Producer shall cause to be provided, and shall own, operate and maintain at the SRC Producer's sole cost any necessary electronic communications equipment or devices that are required to provide Public Service real-time access to 15-minute interval data regarding the Photovoltaic Energy produced by the PV System. Unless otherwise notified in writing by Public Service that an alternative telecommunication device is acceptable, such equipment shall include an active, wired telephone or data line capable of transmitting the monthly 15-minute interval data to Public Service. Public Service reserves the right to replace the telecommunication equipment at its sole cost.

5.4 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.3 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. SRC Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.5 Interconnection Agreement. The Parties recognize that PV System Owner and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rules 3850 through 3859 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3850, *et. seq.*, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated August 6, 2020, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, (a) nothing in the Interconnection Agreement shall alter or modify SRC

Producer's or Public Service's rights, duties and obligations under this Agreement and (b) this Agreement may be terminated by Public Service in its sole discretion upon the termination of the Interconnection Agreement which will be effective upon written notice to SRC Producer of such termination. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.6 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.6. SRC Producer's right to self-generate hereunder shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

ARTICLE VI **FORCE MAJEURE**

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC

Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy and associated RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend

such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the SRC Producer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

ARTICLE VII
DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Events of Default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below (an “Event of Default”):

(A) A breach by either Party of its material covenants or warranties set forth in this Agreement, that is not excused by Force Majeure, and such breach remaining unremedied for 30 Days after notice thereof having been given by the non-defaulting Party.

(B) Any representation or warranty made by SRC Producer in this Agreement, the SRC Bid, the SRC Application, or the Post-Bid Requirements, including without limitation representations or warranties regarding any characteristics or specifications of the PV System or any Subscriber Mix Commitment, being false or misleading in any material respect when made, or ceasing to remain materially true during the Term of this Agreement.

7.2 Prior to commencing any action to enforce this Agreement, the non-defaulting Party shall provide written notice of default to the Party asserted to be in default and the Party asserted to be in default shall have a period of thirty (30) days following receipt of such written notice within which to cure the asserted default (or if the asserted default is of a nature which cannot reasonably be cured within such 30-day period, to commence and thereafter diligently pursue a cure thereof.)

7.3 Failure of either Party to assert an Event of Default or to enforce any term or condition of this Agreement shall not constitute a waiver of any other similar or other default, or waiver of such term or condition or of any other term or condition of this Agreement. Each Party hereby irrevocably and unconditionally waives any right to a trial by jury for the resolution of any dispute arising under this Agreement.

7.4 If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the prevailing Party in any action brought for the purpose of enforcing such provisions shall be entitled to recover its reasonable attorney fees, expenses and costs of such action from the non-prevailing Party.

7.5 Upon an uncured Event of Default, the non-defaulting Party may terminate this Agreement immediately upon notice to the other Party and pursue any other remedy available to it under this Agreement or under law or in equity.

ARTICLE VIII
LIABILITY AND INDEMNIFICATION

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the tax, financial or legal consequences, if any, to SRC Producer with respect to the installation of the PV System or the production and sale of Photovoltaic Energy and associated RECs, and SRC Producer is urged to seek professional advice regarding these issues.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates (collectively “Indemnified Parties”) harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature (“Losses”) that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer’s administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

8.3 Indemnification by SRC Producer: Environmental. SRC Producer shall indemnify, defend and hold the Indemnified Parties harmless from and against all Losses arising out of any claim alleging Environmental Contamination at the Solar Garden Site and/or illegal disposal of Hazardous Materials off-site, regardless of merit and regardless of SRC Producer’s responsibility therefor.

ARTICLE IX **LAWS AND REGULATORY BODIES**

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto (“Applicable Law”). Without limiting the generality of the foregoing and unless otherwise expressly stated to the contrary in the Colorado Revised Statutes or by an order or decision of the Commission or a rule promulgated by the Commission, the Parties acknowledge and agree that the rules set forth in 4 *Code of Colorado Regulations* 723-3-3665 (or any successor rule or rules of the Commission) and Public Service’s then current Renewable Energy Standard Compliance Plan, as approved by the Commission, as each of them exist as of the date of the RFP (the “Effective Time”) shall govern regardless of any changes, amendments, restatements, modifications, additions, or deletions of such rules or to such plan following the Effective Time.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over the PV System takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both Parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues

any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either Party (in that Party's reasonable good faith opinion), then the Party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other Party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other Party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other Party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that an electronic signature or a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld; provided, however, that Public Service may assign this Agreement to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the location of the PV System. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral

assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent to assignment, in form acceptable to Company, to any of SRC Producer's lenders requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy
Attn: Solar*Rewards Community
1800 Larimer St, 15th Floor
Denver, CO 80202
Fax: 1.800.252.4371

If to SRC Producer:

Jeff Hughes
McKinstry RDCS 1, LLC
4835 East Cactus Road, Ste 100
Scottsdale, AZ 85254

General Counsel
5005 3RD AVE S
SEATTLE, WA, 98134-2423

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, and the SRC Bid constitute the entire understanding and agreement between the Parties with respect to the PV System, and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto. In the event of any conflict or discrepancy between any information provided by SRC Producer in the SRC Bid and the corresponding information set forth herein, including without limitation any REC price, Subscriber Mix Commitment or Construction Milestone, the information in the SRC Bid shall control and shall be deemed to replace and supersede the corresponding information set forth herein, unless otherwise expressly agreed by Public Service in writing.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

SRC Producer

SRC Producer Name (printed): McKinstry RDCS 1, LLC

SRC Producer Representative: Jeff Hughes

Title: Director

Jeffrey Hughes

Digitally signed by Jeffrey Hughes
DN: C=US, E=jeffreyh@mcKinstry.com,
O=McKinstry, OU=0560, CN=Jeffrey Hughes
Reason: I agree to the terms defined by the
placement of my signature on this document
Date: 2022.04.15 08:57:50-0700

SRC Producer Signature: _____ Date: _____

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

By: Lee Gabler Digitally signed by Lee Gabler
Date: 2022.04.28 08:44:18
-06'00'

Date: _____.

**As authorized agent for
Public Service Company of Colorado**

Solar Garden ID No. **SRC083136**

Exhibit A
to
Solar*Rewards Community Producer Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

CCD-CSG9-DEN2
SRC083136
E 114th Ave and Trussville St
Denver, CO 80249

Exhibit B
to
Solar*Rewards Community Producer Agreement

**SRC SUBSCRIBER AGENCY AGREEMENT
FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)**

SRC Subscriber Name: _____

SRC Subscriber Retail Customer Account No.: _____

SRC Subscriber Service Address: _____

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: _____(Primary) _____(Alt.)

SRC Producer (Subscriber Organization) Name: _____

Solar Garden ID No: _____

Name and Location of Solar Garden: _____

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): _____ kW

The undersigned SRC Subscriber hereby authorizes _____ ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit

on any of SRC Subscriber’s electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber’s electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer’s execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber’s bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

1. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber’s agent with respect to SRC Subscriber’s beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber’s subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff.

2. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service’s receipt of notice that SRC Subscriber’s subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

4. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber’s knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

5. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed “Consent to Disclose Utility Customer Data” form granting consent for Public Service to share information regarding SRC Subscriber’s past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber’s eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the Xcel Energy website or the website of the Colorado Public Utilities Commission.

IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER

SRC PRODUCER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit C
to
Solar*Rewards Community Producer Agreement

Construction Milestones

DATE	RESULTS ACHIEVED
1	SRC Producer has submitted post bid information (10 subscribers, deposit/escrow, proposed site location, and low income subscriber summary).
2	The SRC Producer Agreement has been executed.
3	SRC Producer has received site acquisition/control.
4	Site Survey and soils report have been obtained.
5	SRC Producer has obtained all variance allowances and planning approval.
6	SRC Producer has obtained all required permits.
7	SRC Producer has achieved closing on financing for the PV System and the Solar Garden Site, if necessary, or has provided Public Service with proof of financial capability to construct the PV System.
8	SRC Producer and all required counterparties have executed major procurement contracts, the Construction Contract, and any operating agreements needed to commence construction of the PV System.
9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
10	The SRC Producer has started PV System construction.
11	SRC Producer has provided Public Service with copies of applicable inspection reports for the PV System.
12	SRC Producer has provided Public Service with evidence of complying with that insurance coverage required prior to the date of Substantial Completion.
13	SRC Producer shall have made the Interconnection of the CSG generating facility and is capable of being energized.
14	Substantial Completion has been achieved and the date duly recorded.

	15	All other SRC application documentation reasonably requested by Public Service is on file with Public Service.
	16	SRC Producer has Substantially Completed the PV System within 24 months of receiving an award.

Exhibit D
to
Solar*Rewards Community Producer Agreement
Subscriber Mix Commitment

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as Eligible Low-Income CSG Subscribers: 0 %

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as residential rate class service customers (R, RE-TOU, RD, or RD-TDR): 0 %

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Solar Garden ID No. **SRC086152**

Solar*Rewards Community Producer Agreement
Solar*Rewards Community Photovoltaic (PV) Systems
For SRC Producers

1. This Agreement is made and entered into this 15 day of April, 2022, by and between Public Service Company of Colorado, d/b/a/ Xcel Energy (“Public Service” or “Company”), a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202, and **McKinstry RDCS 1, LLC** (“SRC Producer”), a **Washington Limited Liability Company** whose business address is **5005 3RD AVE S, SEATTLE, WA, 98134-2423**, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS:

This Agreement governs the relationship between Public Service and SRC Producer, both on behalf of itself and as authorized agent for SRC Subscribers (as defined in Section 1.25 below) with respect to the Photovoltaic Energy and associated Renewable Energy Credits (“RECs”) generated by the community solar garden photovoltaic solar system (the “PV System”) installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (AC) nameplate capacity of 243 kW. The PV System Owner (as defined in Section 1.15 below) has separately provided assurances to Public Service that SRC Producer has the power and authority to enter into this Agreement and perform its obligations hereunder, and that PV System Owner will promptly inform Public Service if SRC Producer no longer has such power and authority (and the identity of any assignee), which assurances are a material inducement to Public Service entering into this Agreement with SRC Producer.

In consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Agreement.

- 1.1 “Applicable Law” shall have the meaning set forth in Section 9.1 of this Agreement.
- 1.2 “Commission” shall mean the Public Utilities Commission of the State of Colorado.

1.3 “Commonly Owned” shall mean ownership by the same corporate entity or through either legal affiliates or partnerships other than common debt or tax equity partners.

1.4 “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.3 hereof.

1.5 “Deposit” shall mean a security deposit in an amount equal to \$100/kW of the PV System’s Direct Current (DC) nameplate capacity.

1.6 “Electric Tariffs” shall mean Public Service’s electric tariffs as in effect and on file with the Commission from time to time.

1.7 “Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Solar Garden Site will not be available or usable for the purposes contemplated by this Agreement, and/or (iii) will preclude or interfere with SRC Producer’s ability to perform its obligations under this Agreement as and when due.

1.8 “Force Majeure” shall have the meaning set forth in Section 6.1 of this Agreement.

1.9 “Hazardous Material” means any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed or identified under, or which may form the basis for liability under Applicable Law, or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; per- and poly-fluoroalkyl substances; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing materials; medical waste; solid waste, and any excavated soil, debris, or groundwater that is contaminated with such materials.

1.10 “House Power” shall mean the supply of retail power for consumption at the Solar Garden Site.

1.11 “Interconnection Agreement” shall mean the separate agreement to be entered into between PV System Owner and Public Service providing the terms and conditions by which PV System Owner may interconnect and operate the PV System in parallel with Public Service’s electric distribution system at the Solar Garden Site.

1.12 “Monthly Subscription Information” shall mean the information stored within the SRC Application System, as timely entered or changed by SRC Producer via the SRC Application System pursuant to Section 4.7 hereof, setting forth the names of the SRC Subscribers holding Subscriptions in the PV System, each such SRC Subscriber’s identifying information, and the SRC Allocation applicable to each such SRC Subscriber’s Subscription, reflecting each SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System during a particular Production Month.

1.13 “Photovoltaic Energy” shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity delivered to Public Service and measured at the Production Meter. Photovoltaic Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

1.14 “Post-Bid Requirements” shall have the meaning set forth in the RFP.

1.15 “Production Meter” shall mean the measuring facility installed by Public Service pursuant to Section 5.2 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy and the associated RECs change possession from SRC Producer to Public Service.

1.16 “Production Month” shall mean the calendar month during which Photovoltaic Energy and associated RECs are produced by the PV System and delivered to Public Service at the Production Meter.

1.17 “PV System” shall mean the solar electric generating facility to be located at the Solar Garden Site, including the photovoltaic panels, inverter, output breakers, facilities necessary to connect to the Production Meter, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Photovoltaic Energy and associated RECs subject to this Agreement.

1.18 “PV System Owner” shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System.

1.19 “PVWATTS” shall mean the National Renewable Energy Laboratory’s PVWATTS Calculator, or any successor product or service.

1.20 “Renewable Energy Credit” or “REC” shall have the meaning set forth in 4 CCR 723-3-3652. In addition REC shall also mean the right to all non-energy and environmental attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the capacity available and/or energy generated by the PV system, including environmental air quality credits, tags and allowances created by law or regulation by virtue of the PV system’s environmentally favorable or renewable characteristics or attributes. “RECs” includes but is not limited to rights eligible for registration, trading and/or use under the Western Renewable Energy Generation Information System (“WREGIS”).

For the avoidance of doubt, a “REC” excludes (i) any local, state or federal production tax credit, depreciation deductions or other tax credits providing a tax benefit to SRC Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, including the investment tax credit expected to be available to SRC Producer or the owner of the PV System with respect to the PV System under Internal Revenue Code Section 48 (Energy Credits); (ii) any direct governmental grant or payment inuring to the benefit of SRC Producer or

the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, pursuant to Section 1603 of the American Recovery and Reinvestment Act, or other federal or state legislation; and (iii) depreciation and other tax benefits arising from ownership or operation of the PV System unrelated to its status as a generator of renewable or environmentally clean energy.

1.21 “RFP” shall mean the Public Service request for proposal regarding the purchase of Photovoltaic Energy and associated RECs from Community Solar Gardens that SRC Producer responded to with its SRC Bid.

1.22 “Rural” shall mean an area classified as “rural” by the United States Census Bureau as of the date of execution of this Agreement.

1.23 “Solar Garden Site” shall mean the parcel of real property on which the PV System will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement, which may be updated by the mutual agreement of the Parties from time to time.

1.24 “Solar*Rewards Community Application and Subscriber Management System” or “SRC Application System” is the interactive, internet website-based interface maintained by Public Service through which SRC Producer may establish qualification and provide information and complete documents necessary for acceptance in Public Service’s Solar*Rewards Community Program, and may enter or change the Monthly Subscription Information reflecting each SRC Subscriber’s allocable portion of the Photovoltaic Energy and associated RECs produced by the PV System each Production Month. For each user that logs into to the SRC Application and Subscriber Management System SRC Producer shall be charged and shall pay an annual site license of \$500 for each user that logs into to the SRC Application and Subscriber Management System. This number is subject to change in future contract cycles with the software platform vender. Checks should be made out to “Public Service Company of Colorado” and must be submitted with the SRC Producer Agreement.

1.25 “SRC Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the PV System, applicable to each SRC Subscriber’s Subscription reflecting such SRC Subscriber’s allocable portion of Photovoltaic Energy and associated RECs produced by the PV System in a particular Production Month. In accordance with Section 4.7 below, the SRC Producer is required to timely provide the SRC Allocation to Public Service on a monthly basis through the SRC Application System, which Public Service will in turn use to calculate the SRC Credit for each billing month.

1.26 “SRC Application” shall have the meaning set forth in the RFP.

1.27 “SRC Bid” shall mean SRC Producer’s bid for the sale of Photovoltaic Energy and associated RECs from the PV System in response to the RFP.

1.28 “SRC Credit” shall mean the dollar amount paid by Public Service to each SRC Subscriber as a credit on the SRC Subscriber’s retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service from the SRC Producer, in accordance with Rate Schedule SRC of Public Service’s Electric Tariffs.

1.29 “SRC Subscriber” shall mean the retail electric service customer of Public Service who: (a) owns a beneficial share of the Photovoltaic Energy and associated RECs produced by the PV System pursuant to a Subscription; (b) has attributed such Subscription to one or more premises served by Public Service where it is the customer of record; and (c) has entered into a SRC Subscriber Agency Agreement with SRC Producer.

1.30 “SRC Subscriber Agency Agreement” shall mean an agreement entered into between each SRC Subscriber and SRC Producer, in a form substantially the same as the SRC Subscriber Agency Agreement attached hereto as Exhibit B, by and through which each SRC Subscriber has authorized SRC Producer to act as SRC Subscriber’s agent for purposes of this Agreement, including, among other things, to sell SRC Subscriber’s beneficial share of Photovoltaic Energy and associated RECs generated by the PV System to Public Service.

1.31 “Subscription” shall mean a proportional interest owned or held by a particular SRC Subscriber in the PV System within the meaning of Section 40-2-127(2)(b)(III), C.R.S., which meets all of the requirements set forth in Section 3.3 below.

1.32 “Substantial Completion” shall mean the date that all construction and installation of the PV System is completed, and the PV System is ready to be commissioned at the full-agreed upon generation capacity, including, but not limited to, a set transformer, meter set request, and the SRC Producer having requested a scheduled witness test for the PV System.

1.33 “Urban” shall mean an area classified as “urban” by the United States Census Bureau as of the date of execution of this Agreement.

ARTICLE II TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS

2.1 Sale and Delivery of Subscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer shall sell and deliver to Public Service at the Production Meter all of the Photovoltaic Energy and associated RECs produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System. Notwithstanding anything to the contrary, Public Service’s payment obligation set forth in Section 2.3, if applicable, and the SRC Credits (as an indirect inducement of SRC Subscribers to obtain Subscriptions from SRC Producer) are SRC Producer’s sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are attributable to Subscriptions.

2.2 SRC Credits.

(a) For each SRC Subscriber, Public Service shall apply an SRC Credit each billing period to such SRC Subscriber's bill for retail electric service in accordance with Rate Schedule SRC of Public Service's Electric Tariffs based upon the SRC Subscriber's SRC Allocation as set forth in the Monthly Subscription Information applicable to the preceding Production Month. The Production Month to which the SRC Credit is applicable shall not necessarily match the billing period for retail electric service bill in which the SRC Credit is applied.

(b) For purposes of applying the SRC Credit to SRC Subscribers' bills, Public Service shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered or changed by SRC Producer via the SRC Application System in accordance with the procedures set forth in Section 4.7 below. The correction of previously-applied SRC Credits among SRC Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to an SRC Subscriber's Subscription in the PV System and the beneficial share of Photovoltaic Energy and associated RECs produced by the PV System shall be the full responsibility of the SRC Producer.

2.3 Positive Price and Payments to SRC Producer for Photovoltaic Energy and Associated RECs. The price to be paid by Public Service for the purchase of the Photovoltaic Energy and the associated RECs hereunder shall be expressed in dollars per megawatt-hour (MWh), with one REC being generated for each MWh of energy generated by the PV System. If the price to be paid is positive, as set forth in the SRC Bid, Public Service shall pay SRC Producer the price of \$ 48.61 per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Payments for such purchases shall be made monthly by check to SRC Producer for the Photovoltaic Energy and the associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.4 Negative Price and Option for One-Time Payment to Public Service for Photovoltaic Energy and Associated RECs. If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, Public Service and the SRC Producer may agree that the SRC Producer may make a one-time payment to Public Service of \$ N/A. Such payment shall be made by check to Public Service issued within thirty (30) days after the Date of Commercial Operation.

2.5 Negative Price and Payment(s) to Public Service. The price to be paid by SRC Producer to Public Service for acceptance of RECs shall be expressed in dollars per megawatt-hour (MWh). If the price to be paid for the Photovoltaic Energy and the associated RECs is negative, as set forth in the SRC Bid, SRC Producer shall pay Public Service the price of \$ N/A per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy. Unless otherwise paid in accordance with Section 2.4, payments shall be made by check to Public Service by SRC

Producer and shall be made within thirty (30) days of Public Service issuing a bill to the SRC Producer.

2.6 Purchase and Sale of Unsubscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy and associated RECs produced by the PV System and delivered to Public Service at the Production Meter not attributable to a Subscription held by any SRC Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Public Service shall pay SRC Producer a price per kWh for the Photovoltaic Energy and associated RECs purchased pursuant to this section that is equal to the Company's average hourly incremental cost of electricity supply over the most recent calendar year. Public Service's actual average hourly incremental cost of electricity supply over the most recent calendar year shall be calculated in accordance with the methodology for determining Public Service's actual average hourly cost of the last 10 MW dispatched for any purpose set forth in Schedule 9, Generator Imbalance Service, of its then-effective Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission. Such actual average hourly incremental cost shall be posted from time-to-time on Xcel Energy's website. Payments for such purchases shall be made monthly by check to SRC Producer for the unsubscribed portion of the Photovoltaic Energy and associated RECs recorded at the Production Meter during the immediately preceding Production Month. Such payment shall be made within thirty (30) days of the applicable meter reading. Notwithstanding anything to the contrary, Public Service's payment obligation set forth in this Section 2.6 is SRC Producer's sole consideration for the sale and delivery of Photovoltaic Energy and associated RECs generated by the PV System that are not attributable to Subscriptions.

2.7 Title, Risk of Loss, and Warranty of Title. As between the Parties, SRC Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Public Service at the Production Meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Public Service at the Production Meter. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances. SRC Producer shall have at the time of delivery good and sufficient title, or the right to transfer good and sufficient title, to all RECs associated with such Photovoltaic Energy output to Public Service, free and clear of all liens and encumbrances.

2.8 Exclusive Dealing. SRC Producer shall not sell any Photovoltaic Energy or any associated RECs generated from the PV System to any person other than Public Service during the Term of this Agreement, and Public Service shall purchase and own all Photovoltaic Energy and associated RECs produced by the PV System.

ARTICLE III **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 SRC Producer warrants and covenants from and after the Date of Commercial Operation to Public Service as follows:

(a) SRC Producer will be either the PV System Owner or a subscriber organization organized under Section 40-2-127, C.R.S., duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to SRC Subscribers.

(b) SRC Producer will be duly authorized to sell and deliver to Public Service Photovoltaic Energy and associated RECs produced by the PV System on behalf of all SRC Subscribers who then have valid Subscriptions in the PV System.

(c) SRC Producer will have the right and authority to sell the unsubscribed Photovoltaic Energy and associated RECs produced by the PV System to Public Service.

(d) SRC Producer will at all times have a designated primary application manager or other authorized representative, and such individual will have authority to act on behalf of SRC Producer (and Public Service will be entitled to rely on such individual's authority) for all actions contemplated by this Agreement, including payment direction to return the Deposit or escrowed funds under Sections 4.4 and 4.5.

(e) PV System Owner has authorized SRC Producer (which authorization has not been revoked, terminated or limited in any respect) to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as SRC Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Public Service in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to SRC Subscribers and Subscriptions.
SRC Producer covenants and warrants during the Term as follows:

(a) No SRC Subscriber will, at any time following the Date of Commercial Operation, own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy and associated RECs generated by the PV System.

(b) Effective upon the first day of the Production Month immediately following eighteen (18) months after the Date of Commercial Operation, the SRC Producer shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs generated by the PV System.

(c) SRC Producer shall ensure that each Subscription is sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the SRC Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS), reduced by the amount of any existing retail renewable distributed generation at such premises; provided that the minimum one kW sizing requirement herein will not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(d) The premises to which a Subscription is attributed by a SRC Subscriber will be a premise served by Public Service and will be within the same county as, or a county adjacent to, that of the Solar Garden Site. If any SRC Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Public Service, then, effective upon the date such premises is no longer served by Public Service, SRC Producer shall remove such Subscription from the SRC Application System and, if SRC Producer fails to do so, Public Service shall have the right to remove such Subscription on the SRC Producer's behalf.

(e) Unless otherwise expressly agreed by Public Service in writing, SRC Producer shall allocate Subscriptions to the classes or categories of Subscribers set forth on Exhibit D, including, if applicable, Eligible Low-Income CSG Subscribers or residential rate class service customers (R, RE-TOU, RD, or RD-TDR), in the percentages of the SRC Allocation as set forth on Exhibit D (each percentage, a "Subscriber Mix Commitment"), and SRC Producer shall cause each such Subscriber Mix Commitment to be at least as great as the corresponding commitment set forth in the SRC Bid. If, at any time, SRC Producer fails to meet or exceed any Subscriber Mix Commitment, SRC Producer will only be entitled to payment at the unsubscribed energy and REC rate set forth in Section 2.6 for that portion of the SRC Allocation set aside or dedicated for the applicable Subscriber Mix Commitment that fails to meet such Subscriber Mix Commitment.

(f) The primary business of any SRC Subscriber at the retail customer premises to which the Subscription is attributed will not be the generation of electricity for retail or wholesale sale.

In addition to any other rights and remedies set forth herein, (i) Public Service reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of SRC Producer's preceding requirements set forth in this Section 3.3 and (ii) if an SRC Allocation for any SRC Subscriber or Subscription no longer complies with the preceding requirements set forth in this Section 3.3 as determined in Public Service's discretion, then Public Service may treat such SRC Allocation as unsubscribed unless and until such all such requirements have been met with respect to such SRC Subscriber and such Subscription.

3.4 Requirements and Restrictions Applicable to the PV System. SRC Producer further covenants and warrants during the Term as follows:

(a) Following the Date of Commercial Operation, the PV System will have at least ten SRC Subscribers.

(b) The PV System will have a capacity nameplate rating of two megawatts (2 MW) or less.

(c) The PV System will be located within Public Service's existing service territory, as defined pursuant to a final Commission order issuing to Public Service a certificate of public convenience and necessity authorizing Public Service to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If the PV System is or will no longer be located within Public Service's existing service territory, then Public Service may terminate this Agreement, which termination

will be effective on the date of Public Service's written notice of such termination, or, if later, the date that the PV System is no longer located within Public Service's service territory.

(d) The location of CSGs will not result in more than 2 MWs of Commonly Owned total capacity of CSGs energized within a 0.5 mile distance as measured from point of interconnection to point of interconnection for Rural CSGs. In Urban areas the distance between points of interconnection between Commonly Owned CSGs will be maintained at 0.5 miles; however, the capacity allowed within this distance will be increased to 4.0 MW. Furthermore, each awarded CSG must be contained on its own legal parcel of land.

(e) If the PV System has a nameplate capacity of one (1) MW or greater, the PV System will be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

In addition to any other rights and remedies set forth herein, Public Service may refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during any period that SRC Producer is not in compliance with the preceding requirements set forth in this Section 3.4.

3.5 Responsibility for Verification. The SRC Producer and Public Service shall jointly verify that each SRC Subscriber is eligible to be an SRC Subscriber in the PV System pursuant to Section 3.3 above.

3.6 Code Compliance. SRC Producer shall be solely responsible for ensuring and shall ensure that the PV System equipment installed at the Solar Garden Site is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.

3.7 Public Service Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

ARTICLE IV

TERM, COMMERCIAL OPERATION AND PERFORMANCE

4.1 Term. This Agreement shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation, subject to early termination as set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, or expiration to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination or expiration and, as applicable, to provide for final billings and adjustments related to the period prior to termination or expiration, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

4.2 Project Development. Prior to the Date of Commercial Operation, SRC Producer agrees to (i) submit regular progress reports (and not fewer than semi-annually) to Company

including current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Date of Commercial Operation; (ii) provide copies of reports submitted to the PV System Lender relating to status, progress and development of the project, (iii) upon Company request, meet with the Company to participate in semi-annual meetings to discuss the progress reports, answer questions, and assess the schedule, and (iv) participate in semi-annual progress review and issue remediation meetings when requested by the Company. SRC Producer shall make all relevant contractors available to Company in order to keep the Company fully informed on the status of the development. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service, ceasing once Commercial Operation has been obtained. Upon request, the Company shall have the right to monitor the construction, start-up, testing, and operation of the PV System at the Solar Garden Site for compliance with this Agreement, the SRC Bid, the SRC Application, and the Post-Bid Requirements, *provided, however, that* Company shall comply with all of SRC Producer's reasonable and applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

4.3 Commercial Operation. Commercial Operation is achieved when: (a) 100% of the nameplate capacity of the PV System is installed; (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, as witnessed by Public Service personnel at the Solar Garden Site; (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Photovoltaic Energy generated by the PV System have been obtained; (d) the PV System is authorized to operate by Public Service; and (e) the Interconnection Agreement has been entered into between Public Service and SRC Producer and the PV System has been interconnected with Public Service's electric distribution system pursuant to the Interconnection Agreement.

4.4 Deposit. Within ninety (90) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as the required Deposit in connection with its SRC Application; less any amounts deducted in accordance with Section 5.1. Notwithstanding the foregoing, if this Agreement is terminated for any reason other than Public Service's failure to perform or observe any material term or provision of this Agreement, then the Deposit shall become non-refundable and forfeited by SRC Producer to the Renewable Energy Standard Adjustment account.

4.5 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Public Service shall provide to SRC Producer a written certification in accordance with Rule 3882(d) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3882, or, if such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and SRC Producer provides written notice to Public Service of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Public Service, Public Service shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.6 Maintenance and Repair of PV System. The SRC Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged, destroyed or is otherwise out of operation, the SRC Producer shall provide Public Service written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the SRC Producer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy and associated RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Public Service shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Public Service shall have the right to terminate this Agreement by providing written notice to SRC Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.6, then SRC Producer shall pay Public Service liquidated damages in an amount equal to (a) the estimated annual generation of the PV System, as determined via PVWATTS, after applying an annual cell degradation factor of one percent (1%) each year (compounded) after the first year, multiplied by (b) the number of years or partial years remaining in the Term as of the effective date of such termination, and further multiplied by (c) the positive difference resulting, if any, by subtracting (i) the price per MWh to be paid (expressed as a negative number if SRC Producer is paying Public Service) for the Photovoltaic Energy and the associated RECs set forth in Sections 2.3 through 2.5, as applicable, from (ii) the weighted-average price per MWh for Photovoltaic Energy and associated RECs of the awarded bids under Public Service's most recent request for proposal under its Solar*Rewards Community Service program. In no event will the foregoing calculation be deemed to obligate Public Service to make any payment to SRC Producer. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that (i) the liquidated damages set forth herein are not a penalty and (ii) that Public Service's actual damages in the event of an SRC Producer default under this Section 4.6 would be difficult to ascertain and that the liquidated damages set forth herein adequately represent the Parties' best estimate of such damages.

4.7 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, SRC Producer shall provide to Public Service any and all changes to the Monthly Subscription Information, by entering new or updating previously-entered data through the use of the SRC Application System, in order to ensure that the SRC Subscribers and SRC Allocation applicable to each such SRC Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so entered and updated shall be used by Public Service with respect to the Photovoltaic Energy and associated RECs produced and delivered during such Production Month to calculate the SRC Credits applicable to SRC Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy to be purchased and sold in accordance with Article II hereof and to determine

the amount RECs attributable to the unsubscribed Photovoltaic Energy. Such data to be entered or changed by SRC Producer shall include additions and deletions to the SRC Subscribers holding Subscriptions in the PV System, the SRC Subscriber's identifying information (*e.g.*, account number and service address attributable to each Subscription) and the SRC Allocation for each SRC Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.8 Review of Low-Income Qualification. The SRC Producer shall assist Public Service with verifying that any eligible low-income CSG subscriber, as defined in Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652, meets the requirements set forth in 4 CCR 723-3-3652(o). Assistance may include but is not limited to providing any documentation of low-income status as defined above or providing any contact information for the verifying agency or organization.

4.9 Subscription Limitations. SRC Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Public Service subject to the requirements of Section 3.3 above. To the extent a Subscription is issued to or held by an SRC Subscriber who is not an eligible retail electric customer of Public Service, such Subscription shall be deemed invalid and eliminated from the SRC Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the SRC Allocation and applicable pricing. If the SRC Subscriber to which such SRC Allocation is attributable no longer holds a valid Subscription in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. If the SRC Subscriber to which such SRC Allocation is attributable no longer meets the qualification of low income as defined under 4 CCR 723-3-3652(o) in the PV System, Public Service reserves the right to suspend the application of SRC Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the SRC Producer. Furthermore, until the remedy has occurred the SRC Producer will be paid at the rate described in Section 2.6 of this Agreement for any energy producer that is attributable to the applicable SRC Allocation.

4.10 Subscription Transfers. Subscriptions may be transferred between eligible SRC Subscribers by reflecting such transfer in the Monthly Subscription Information through changes or entries by SRC Producer via the SRC Application System. The SRC Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

4.11 Disclosure of Production Information. SRC Producer acknowledges and agrees that, in order for Public Service to carry out its responsibilities in applying SRC Credits to SRC Subscribers' bills for electric service, Public Service may be required and shall be permitted to provide access or otherwise disclose and release to any SRC Subscriber any and all production data related to the PV System in its possession and information regarding the total SRC Credits applied by Public Service with respect to the PV System and the amounts paid to SRC Producer for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the PV System. Any additional detailed information requested by SRC Subscriber shall be provided only upon SRC Producer's consent in writing to Public Service.

4.12 No Relocation. Upon Commercial Operation, The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.13 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, SRC Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council (WECC) in accordance with 4 CCR 723-3-3659(j).

4.14 Request for Information. Until the Date of Commercial Operation, SRC Producer shall promptly provide (and no later than 10 days following the date of any request) Public Service with any and all information and documentation reasonably requested by Public Service regarding the current status of each Construction Milestone as set forth in the SRC Bid, a copy of which is attached hereto as Exhibit C, including, without limitation, any significant developments or delays along with an action plan for making up such delays and SRC Producer's best estimate of the date of Substantial Completion.

4.15 Audits. Public Service reserves the right, upon thirty (30) days written notice, to audit SRC Producer's subscriber and Subscription records and to inspect the PV System at any time during the Term of this Agreement, and for an additional period of one year thereafter.

ARTICLE V

PRODUCTION METER AND INTERCONNECTION

5.1 Construction Timelines. The SRC Producer will have 24 months to bring the PV System to Substantial Completion from the date of notice that the SRC Bid was a winning bid (the "Target Completion Date"). If the PV System has not achieved Substantial Completion by the Target Completion Date, the Deposit will be forfeited to the Renewable Energy Standard Adjustment account in an amount equal to 1/180th of the Deposit per day for each day following the Target Completion Date that the PV System has not been brought to Substantial Completion, not to exceed the Deposit. If the PV System has not been brought to Substantial Completion after 30 months, Public Service will consider the PV System incomplete and have the right to remove it from the Solar*Rewards Community program with any associated capacity forfeited and terminate this Agreement which will be effective upon written notice to SRC Producer of such termination.

5.2 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Public Service shall install, and thereafter own, operate, maintain and

read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and SRC Producer shall reimburse Public Service for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service after the Production Meter is installed. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Public Service reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

5.3 Telecommunications Equipment. SRC Producer shall cause to be provided, and shall own, operate and maintain at the SRC Producer's sole cost any necessary electronic communications equipment or devices that are required to provide Public Service real-time access to 15-minute interval data regarding the Photovoltaic Energy produced by the PV System. Unless otherwise notified in writing by Public Service that an alternative telecommunication device is acceptable, such equipment shall include an active, wired telephone or data line capable of transmitting the monthly 15-minute interval data to Public Service. Public Service reserves the right to replace the telecommunication equipment at its sole cost.

5.4 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by SRC Producer pursuant to Section 5.3 is inactive or non-operational during any Production Month when Public Service attempts to access measurement data from the telemetry equipment on the Production Meter, SRC Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the Schedule of Charges for Rendering Service section of Public Service's electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. SRC Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to SRC Producer by Public Service. If SRC Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.5 Interconnection Agreement. The Parties recognize that PV System Owner and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rules 3850 through 3859 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3850, *et. seq.*, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated August 6, 2020, as may be updated from time to time and posted on Xcel Energy's website. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, (a) nothing in the Interconnection Agreement shall alter or modify SRC

Producer's or Public Service's rights, duties and obligations under this Agreement and (b) this Agreement may be terminated by Public Service in its sole discretion upon the termination of the Interconnection Agreement which will be effective upon written notice to SRC Producer of such termination. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the Interconnection Agreement.

5.6 House Power. This Agreement does not provide for House Power. SRC Producer shall be solely responsible for arranging retail electric service exclusively from Public Service in accordance with Public Service's Electric Tariffs. SRC Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.6. SRC Producer's right to self-generate hereunder shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify SRC Producer's or Public Service's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between SRC Producer and Public Service with respect to the arrangements for House Power.

ARTICLE VI **FORCE MAJEURE**

6.1 Definition of Force Majeure. (a) The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Photovoltaic Energy and associated RECs in commercial quantities; long-term material changes in Photovoltaic Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of SRC Producer to secure and protect the PV system, terrorism, war, riots, fire; explosion, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of SRC

Producer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or SRC Producer's supplies, or that affect demand or price for any of Public Service's or SRC Producer's products.

6.2 Applicability of Force Majeure. (a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- iv. when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

(b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Photovoltaic Energy and associated RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend

such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the SRC Producer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

ARTICLE VII
DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Events of Default. Any of the following events shall constitute an event of default if such event has not been cured as provided for below (an “Event of Default”):

(A) A breach by either Party of its material covenants or warranties set forth in this Agreement, that is not excused by Force Majeure, and such breach remaining unremedied for 30 Days after notice thereof having been given by the non-defaulting Party.

(B) Any representation or warranty made by SRC Producer in this Agreement, the SRC Bid, the SRC Application, or the Post-Bid Requirements, including without limitation representations or warranties regarding any characteristics or specifications of the PV System or any Subscriber Mix Commitment, being false or misleading in any material respect when made, or ceasing to remain materially true during the Term of this Agreement.

7.2 Prior to commencing any action to enforce this Agreement, the non-defaulting Party shall provide written notice of default to the Party asserted to be in default and the Party asserted to be in default shall have a period of thirty (30) days following receipt of such written notice within which to cure the asserted default (or if the asserted default is of a nature which cannot reasonably be cured within such 30-day period, to commence and thereafter diligently pursue a cure thereof.)

7.3 Failure of either Party to assert an Event of Default or to enforce any term or condition of this Agreement shall not constitute a waiver of any other similar or other default, or waiver of such term or condition or of any other term or condition of this Agreement. Each Party hereby irrevocably and unconditionally waives any right to a trial by jury for the resolution of any dispute arising under this Agreement.

7.4 If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the prevailing Party in any action brought for the purpose of enforcing such provisions shall be entitled to recover its reasonable attorney fees, expenses and costs of such action from the non-prevailing Party.

7.5 Upon an uncured Event of Default, the non-defaulting Party may terminate this Agreement immediately upon notice to the other Party and pursue any other remedy available to it under this Agreement or under law or in equity.

ARTICLE VIII
LIABILITY AND INDEMNIFICATION

8.1 Limitation of Liability. Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the SRC Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the tax, financial or legal consequences, if any, to SRC Producer with respect to the installation of the PV System or the production and sale of Photovoltaic Energy and associated RECs, and SRC Producer is urged to seek professional advice regarding these issues.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates (collectively “Indemnified Parties”) harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature (“Losses”) that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system, or SRC Producer’s administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

8.3 Indemnification by SRC Producer: Environmental. SRC Producer shall indemnify, defend and hold the Indemnified Parties harmless from and against all Losses arising out of any claim alleging Environmental Contamination at the Solar Garden Site and/or illegal disposal of Hazardous Materials off-site, regardless of merit and regardless of SRC Producer’s responsibility therefor.

ARTICLE IX **LAWS AND REGULATORY BODIES**

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto (“Applicable Law”). Without limiting the generality of the foregoing and unless otherwise expressly stated to the contrary in the Colorado Revised Statutes or by an order or decision of the Commission or a rule promulgated by the Commission, the Parties acknowledge and agree that the rules set forth in 4 *Code of Colorado Regulations* 723-3-3665 (or any successor rule or rules of the Commission) and Public Service’s then current Renewable Energy Standard Compliance Plan, as approved by the Commission, as each of them exist as of the date of the RFP (the “Effective Time”) shall govern regardless of any changes, amendments, restatements, modifications, additions, or deletions of such rules or to such plan following the Effective Time.

9.2 Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over the PV System takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both Parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues

any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either Party (in that Party's reasonable good faith opinion), then the Party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other Party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other Party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other Party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Public Service and SRC producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of SRC Producer to sell and deliver the Photovoltaic Energy output of the PV System and associated RECs to Public Service and the obligations of Public Service to accept and pay SRC Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without giving effect to any conflict of laws principles under which the laws of another jurisdiction would apply.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that an electronic signature or a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.

10.2 Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld; provided, however, that Public Service may assign this Agreement to a utility that is a successor-in-interest to all or any portion of the service territory encompassing the location of the PV System. In no event shall any assignment by SRC Producer become effective before a new SRC Subscriber Agency Agreement has been entered into between SRC Producer's assignee and each and every SRC Subscriber. Notwithstanding the foregoing, Company's consent shall not be required for SRC Producer to make a collateral

assignment of this Agreement to or for the benefit of any lender providing financing and/or refinancing for the PV System; provided, further, that Company shall deliver a written consent to assignment, in form acceptable to Company, to any of SRC Producer's lenders requesting such consent. The SRC Producer shall reimburse, or shall cause the lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the lender consent and any documents requested by the SRC Producer or the lender, and provided by Company, pursuant to this Section.

10.3 Sharing of REC Information. By executing this Agreement, SRC Producer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by SRC Producer under this Agreement with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the SRC Producer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.

10.4 Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall either Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Agreement.

10.5 Amendments or Modifications. No amendment, modification, or change of this Agreement shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

10.7 No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

10.8 Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Agreement shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.

10.9 Notices. All notices, reports or other communications provided for in this Agreement shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy
Attn: Solar*Rewards Community
1800 Larimer St, 15th Floor
Denver, CO 80202
Fax: 1.800.252.4371

If to SRC Producer:

Jeff Hughes
McKinstry RDCS 1, LLC
4835 East Cactus Road, Ste 100
Scottsdale, AZ 85254

General Counsel
5005 3RD AVE S
SEATTLE, WA, 98134-2423

or at such other address as either party may hereafter designate to the other in writing.

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, and the SRC Bid constitute the entire understanding and agreement between the Parties with respect to the PV System, and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto. In the event of any conflict or discrepancy between any information provided by SRC Producer in the SRC Bid and the corresponding information set forth herein, including without limitation any REC price, Subscriber Mix Commitment or Construction Milestone, the information in the SRC Bid shall control and shall be deemed to replace and supersede the corresponding information set forth herein, unless otherwise expressly agreed by Public Service in writing.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

SRC Producer

SRC Producer Name (printed): McKinstry RDCS 1, LLC

SRC Producer Representative: Jeff Hughes

Title: Director

Jeffrey Hughes

Digitally signed by Jeffrey Hughes
DN: C=US, E=jeffreyh@mckinstry.com,
O="McKinstry", OU=0560, CN=Jeffrey Hughes
Reason: I agree to the terms defined by the
placement of my signature on this document
Date: 2022.04.15 09:00:03-07'00'

SRC Producer Signature: _____ Date: _____

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

By: Lee Gabler Digitally signed by Lee
Gabler
Date: 2022.04.28

Title: _____ 08:37:15 -06'00'

Date: _____.

**As authorized agent for
Public Service Company of Colorado**

Solar Garden ID No. SRC086152

Exhibit A
to
Solar*Rewards Community Producer Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

CCD-CSG-DPS NE Early College
SRC086152
11200 E 45th Ave
Denver, CO 80239

Exhibit B
to
Solar*Rewards Community Producer Agreement

**SRC SUBSCRIBER AGENCY AGREEMENT
FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)**

SRC Subscriber Name: _____

SRC Subscriber Retail Customer Account No.: _____

SRC Subscriber Service Address: _____

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: _____(Primary) _____(Alt.)

SRC Producer (Subscriber Organization) Name: _____

Solar Garden ID No: _____

Name and Location of Solar Garden: _____

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): _____ kW

The undersigned SRC Subscriber hereby authorizes _____ ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit

on any of SRC Subscriber’s electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber’s electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer’s execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber’s bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

1. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber’s agent with respect to SRC Subscriber’s beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber’s subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff.

2. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service’s receipt of notice that SRC Subscriber’s subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

4. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber’s knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

5. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed “Consent to Disclose Utility Customer Data” form granting consent for Public Service to share information regarding SRC Subscriber’s past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber’s eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service’s Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the Xcel Energy website or the website of the Colorado Public Utilities Commission.

IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER

SRC PRODUCER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit C
to
Solar*Rewards Community Producer Agreement

Construction Milestones

DATE	RESULTS ACHIEVED
1	SRC Producer has submitted post bid information (10 subscribers, deposit/escrow, proposed site location, and low income subscriber summary).
2	The SRC Producer Agreement has been executed.
3	SRC Producer has received site acquisition/control.
4	Site Survey and soils report have been obtained.
5	SRC Producer has obtained all variance allowances and planning approval.
6	SRC Producer has obtained all required permits.
7	SRC Producer has achieved closing on financing for the PV System and the Solar Garden Site, if necessary, or has provided Public Service with proof of financial capability to construct the PV System.
8	SRC Producer and all required counterparties have executed major procurement contracts, the Construction Contract, and any operating agreements needed to commence construction of the PV System.
9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
10	The SRC Producer has started PV System construction.
11	SRC Producer has provided Public Service with copies of applicable inspection reports for the PV System.
12	SRC Producer has provided Public Service with evidence of complying with that insurance coverage required prior to the date of Substantial Completion.
13	SRC Producer shall have made the Interconnection of the CSG generating facility and is capable of being energized.
14	Substantial Completion has been achieved and the date duly recorded.

	15	All other SRC application documentation reasonably requested by Public Service is on file with Public Service.
	16	SRC Producer has Substantially Completed the PV System within 24 months of receiving an award.

Exhibit D
to
Solar*Rewards Community Producer Agreement
Subscriber Mix Commitment

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as Eligible Low-Income CSG Subscribers: 0 %

Percentage of SRC Allocation allocated to SRC Subscribers who qualify as residential rate class service customers (R, RE-TOU, RD, or RD-TDR): 0 %

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EXHIBIT B: City Meters

The City Meters and corresponding City's Allocated Percentages for the Solar Gardens are detailed below:

Description	Account Address	Account Number	Premise Number	Utility Tariff	Annual Usage (kWh)	Subscription Capacity – (Watts DC)	Est. kWhac delivered to Subscriber in year one	% of total Subscription allocation
Lowry Tennis Courts	8110 E Lowry Blvd, Denver, CO 80230	5387111051	304059148	SG	62,240	47,639	74,688	3.1%
Central Park Rec Center	9651 E Martin Luther King Blvd, Denver, CO 80238	5399121161	304193175	SG	925,332	708,257	1,110,398	45.8%
Central Park Restroom (9225 MLK)	9225 Martin Luther King Blvd, Denver, CO 80238	5389879018	303974075	C	47,760	23,775	37,274	1.5%
Central Park Restroom (8775 MLK)	8775 Martin Luther King Blvd, Denver, CO 80238	5389878426	303974040	SG	72,080	55,171	86,496	3.6%
Harvard Gulch Rec Center	550 E Iliff Ave, Denver, CO 80210	5320097030	301310230	SG	194,400	148,795	233,280	9.6%
Montbello Rec Center	15555 E 53rd Ave, Denver, CO 80239	5398843775	300685807	SG	737,440	564,443	884,928	36.5%
				Totals	2,039,252	1,548,080	2,427,064	100.0%

Notes:

- Subscribed energy cannot exceed 120% of the annual usage of any meter
- Each utility meter can be assigned to more than one Solar Garden
- Total subscription capacity and delivered kWhac estimates may change based on final System design and project location. If such estimates change, the Company shall notify the City and provide updated estimates prior to a System achieving Commercial Operation.
- This estimate is in no way a guarantee of delivered kWhac to the Subscriber.

EXHIBIT C: Description of Solar Gardens

The City agrees to purchase from the Company the right to receive Bill Credits for the City's Allocation Percentages of the Energy Output for the Solar Gardens described below. The following represent initial estimates. The Parties understand and agree that these descriptions may need to be updated prior to each of the Solar Gardens achieving Commercial Operation due to changes in the final System design or project location. If such changes occur, the Company shall notify the City and provide an updated Solar Garden description prior to a System achieving Commercial Operation.

System Name:	System Location:	Utility Identification Number:	System Size (Watt-DC):	Estimated Energy Output – kWhac:	Subscriber Allocation (%):	Subscriber Allocation (watts-DC):	Estimated kWhac delivered to Subscriber:	Anticipated Commercial Operation Date:	100% Low-Income
CCD-CSG7-Montbello Rec Ctr	15555 E 53rd Ave, Denver, CO 80239	SRC083126	556,465	797,971	38.3%	212,932	305,345	2022	N
CCD-CSG8-DEN1	E 114th Ave and Trussville St	SRC083127	625,625	1,250,624	38.3%	239,396	478,553	2022	N
CCD-CSG14-NWC M&O	5125 Race Court, Denver, CO 80216	SRC083128	282,285	407,055	38.3%	108,017	155,760	2022	N
CCD-CSG4-Lowry Tennis	(Sports Blvd. & Fairmount Drive), Denver, CO 80230	SRC083129	429,520	608,200	38.3%	164,356	232,729	2022	N
CCD-CSG6-Central Park Rec Ctr	9651 M.L.K. Jr Blvd, Denver, CO 80238	SRC083131	655,200	932,350	38.3%	250,713	356,765	2022	N
CCD-CSG10-Roslyn DOTI	5440 Roslyn St, Denver, CO 80216	SRC083133	523,250	756,620	0.0%	0	0	2022	Y
CCD-CSG13-Harvard Gulch Rec Ctr	550 E Iliff Ave, Denver, CO 80210	SRC083134	293,900	422,628	38.3%	112,461	161,719	2023	N
CCD-CSG15-NWC SYEC	5004 Packing House Rd., Denver, CO 80216	SRC083135	268,515	390,689	38.3%	102,748	149,498	2023	N
CCD-CSG9-DEN2	E 114th Ave and Trussville St	SRC083136	625,625	1,250,624	38.3%	239,396	478,553	2023	N
CCD-CSG-DPS Northeast Early College	11200 E. 45th Ave. Denver, CO 80239	SRC086152	308,500	441,772	38.3%	118,048	169,045	2023	N
Total			4,568,885	7,258,533		1,548,068	2,487,967		

EXHIBIT D: Estimated Annual Energy Output

The estimated annual Energy Output of the Solar Gardens as shown in Exhibit C from which the City is purchasing Bill Credits is detailed below.

Year	Estimated Energy Output (kWhac)	Subscriber Allocation %	Estimated kWhac delivered to Subscriber
1	6,501,914	38.3%	2,487,967
2	6,462,902	38.3%	2,473,039
3	6,424,125	38.3%	2,458,201
4	6,385,580	38.3%	2,443,451
5	6,347,267	38.3%	2,428,791
6	6,309,183	38.3%	2,414,218
7	6,271,328	38.3%	2,399,733
8	6,233,700	38.3%	2,385,334
9	6,196,298	38.3%	2,371,022
10	6,159,120	38.3%	2,356,796
11	6,122,165	38.3%	2,342,655
12	6,085,432	38.3%	2,328,599
13	6,048,920	38.3%	2,314,628
14	6,012,626	38.3%	2,300,740
15	5,976,551	38.3%	2,286,936
16	5,940,691	38.3%	2,273,214
17	5,905,047	38.3%	2,259,575
18	5,869,617	38.3%	2,246,017
19	5,834,399	38.3%	2,232,541
20	5,799,393	38.3%	2,219,146
Totals	122,886,260	38.3%	47,022,603

Notes:

- This estimate may be updated by the Company, if needed, should the final designs, project location, and/or production capacity of the Solar Gardens changes. If such changes occur, the Company shall notify the City and provide updated estimates prior to a System achieving Commercial Operation.
- This estimate is in no way a guarantee of delivered kWhac to the City.
- Energy Output is anticipated to decrease annually by 0.6%

EXHIBIT E: Purchase Price

On a monthly basis during the Term, the City shall pay the Company an amount equal to City's Allocated Percentage of the Energy Output during the applicable production month. The per kWh Purchase Price shall be a fixed 10% discount off the Utility Bill Credit in effect during the year in which the production month occurs.

The Bill Credit rate can, and will likely, change from year to year and the Purchase Price will be adjusted annually to reflect the 10% discount as necessary. Below is a pricing schedule that shows the potential Purchase Prices for the Term of the agreement. This schedule is for illustrative purposes only and is in no way a guarantee of the actual Purchase Price.

Year	Estimated Subscriber Allocation (kWh)	Anticipated Bill Credit rate (\$/ kWh)	Purchase Price (per kWh)	Estimated Bill Credits applied to Subscriber Accounts	Estimated Purchase Price	Estimated Subscriber Savings
1	2,487,967	\$ 0.0642	\$ 0.0578	\$ 159,802	\$ 143,822	\$ 15,980
2	2,473,039	\$ 0.0655	\$ 0.0590	\$ 162,020	\$ 145,818	\$ 16,202
3	2,458,201	\$ 0.0668	\$ 0.0601	\$ 164,269	\$ 147,842	\$ 16,427
4	2,443,451	\$ 0.0682	\$ 0.0613	\$ 166,549	\$ 149,894	\$ 16,655
5	2,428,791	\$ 0.0695	\$ 0.0626	\$ 168,861	\$ 151,975	\$ 16,886
6	2,414,218	\$ 0.0709	\$ 0.0638	\$ 171,205	\$ 154,084	\$ 17,120
7	2,399,733	\$ 0.0723	\$ 0.0651	\$ 173,581	\$ 156,223	\$ 17,358
8	2,385,334	\$ 0.0738	\$ 0.0664	\$ 175,990	\$ 158,391	\$ 17,599
9	2,371,022	\$ 0.0753	\$ 0.0677	\$ 178,433	\$ 160,590	\$ 17,843
10	2,356,796	\$ 0.0768	\$ 0.0691	\$ 180,910	\$ 162,819	\$ 18,091
11	2,342,655	\$ 0.0783	\$ 0.0705	\$ 183,421	\$ 165,079	\$ 18,342
12	2,328,599	\$ 0.0799	\$ 0.0719	\$ 185,966	\$ 167,370	\$ 18,597
13	2,314,628	\$ 0.0815	\$ 0.0733	\$ 188,548	\$ 169,693	\$ 18,855
14	2,300,740	\$ 0.0831	\$ 0.0748	\$ 191,165	\$ 172,048	\$ 19,116
15	2,286,936	\$ 0.0848	\$ 0.0763	\$ 193,818	\$ 174,436	\$ 19,382
16	2,273,214	\$ 0.0864	\$ 0.0778	\$ 196,508	\$ 176,857	\$ 19,651
17	2,259,575	\$ 0.0882	\$ 0.0794	\$ 199,236	\$ 179,312	\$ 19,924
18	2,246,017	\$ 0.0899	\$ 0.0809	\$ 202,001	\$ 181,801	\$ 20,200
19	2,232,541	\$ 0.0917	\$ 0.0826	\$ 204,805	\$ 184,324	\$ 20,480
20	2,219,146	\$ 0.0936	\$ 0.0842	\$ 207,648	\$ 186,883	\$ 20,765
Totals	47,022,603			\$ 3,654,734	\$ 3,289,261	\$ 365,473

Notes:

- This estimate may be updated by the Company, if needed, should the final designs, project locations, and/or production capacity of the Solar Gardens change. If such changes occur, the Company shall notify the City and provide updated estimates prior to a System achieving Commercial Operation.
- This estimate is in no way a guarantee of delivered bill credits or savings to the Subscriber.
- Energy Output is anticipated to decrease annually by 0.6%
- Bill Credit Rate is projected to increase by 2% annually



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/7/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER: Hub International Northwest LLC
INSURED: McKinstry Essention, LLC
CONTACT NAME:
PHONE: (425) 489-4500
FAX: (425) 485-8489
E-MAIL ADDRESS: now.info@hubinternational.com
INSURER(S) AFFORDING COVERAGE: The Travelers Indemnity Company, Travelers Property Casualty Company of America, Standard Fire Insurance Company, Steadfast Insurance Company.

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liability, Workers Compensation, and Professional Liability.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: Project Tranche One - Renewable Denver Community Solar I ("RDCS I")
City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured, coverage is primary and non-contributory and waiver of subrogation applies per the attached forms/endorsements.

CERTIFICATE HOLDER: City and County of Denver
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
AUTHORIZED REPRESENTATIVE: [Signature]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED
(Includes Products-Completed Operations If Required By Contract)

This endorsement modifies insurance provided under the following:
 COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that you agree in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only:

- a. With respect to liability for "bodily injury" or "property damage" that occurs, or for "personal injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement and while that part of the contract or agreement is in effect; and
- b. If, and only to the extent that, such injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies. Such person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is subject to the following provisions:

- a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits required by the written contract or agreement, the insurance provided to the additional insured will be limited to such minimum required limits. For the purposes of determining whether this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required for the additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in Section III – Limits Of Insurance.
- b. The insurance provided to such additional insured does not apply to:

- (1) Any "bodily injury", "property damage" or "personal injury" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and

- (b) Supervisory, inspection, architectural or engineering activities.

- (2) Any "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement specifically requires you to provide such coverage for that additional insured during the policy period.

- c. The additional insured must comply with the following duties:

- (1) Give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

- (a) How, when and where the "occurrence" or offense took place;

- (b) The names and addresses of any injured persons and witnesses; and

- (c) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- (2) If a claim is made or "suit" is brought against the additional insured:

COMMERCIAL GENERAL LIABILITY

- (a) Immediately record the specifics of the claim or "suit" and the date received; and
 - (b) Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.
- (3) Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- (4) Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to such additional insured is primary to other insurance available to such additional insured which covers that person or organization as a named insured as described in Paragraph 4., Other Insurance, of Section IV – Commercial General Liability Conditions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**OTHER INSURANCE – DESIGNATED ADDITIONAL
INSUREDS – PRIMARY WITH RESPECT TO CERTAIN
OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE OF DESIGNATED ADDITIONAL INSUREDS

Any person or organization that qualifies as an additional insured under such other endorsement to this Coverage Part, if you agree in a written contract to include such person or organization as an additional insured on this Coverage Part and such written contract:

- a. Specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis; and
- b. Was signed and executed by you before, and is in effect when, the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed

PROVISIONS

The following is added to Paragraph 4.a., **Primary Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The insurance afforded under this Coverage Part to any additional insured shown in the Schedule Of

Designated Additional Insureds is primary to any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR CONTRACTORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|--|---|
| <p>A. Who Is An Insured – Unnamed Subsidiaries</p> <p>B. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations</p> | <p>C. Incidental Medical Malpractice</p> <p>D. Blanket Waiver Of Subrogation</p> <p>E. Contractual Liability – Railroads</p> <p>F. Damage To Premises Rented To You</p> |
|--|---|

PROVISIONS

A. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership, joint venture or limited liability company, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a.** You are the sole owner of, or maintain an ownership interest of more than 50% in, such subsidiary on the first day of the policy period; and
- b.** Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal and advertising injury" caused by an offense committed:

- a.** Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b.** After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

For purposes of Paragraph 1. of Section II – Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

- a.** An organization other than a partnership, joint venture or limited liability company; or

- b.** A trust;

as indicated in its name or the documents that govern its structure.

B. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

- a.** Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or
- b.** Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

COMMERCIAL GENERAL LIABILITY

C. INCIDENTAL MEDICAL MALPRACTICE

1. The following replaces Paragraph **b.** of the definition of "occurrence" in the **DEFINITIONS** Section:

b. An act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

2. The following replaces the last paragraph of Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a)**, **(b)**, **(c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide:

(a) "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician or paramedic; or

(b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following replaces the last sentence of Paragraph **5.** of **SECTION III – LIMITS OF INSURANCE**:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph **2.**, **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Sale Of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of

pharmaceuticals committed by, or with the knowledge or consent of, the insured.

5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or

b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

6. The following is added to Paragraph **4.b.**, **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph **2.a.(1)** of Section II – Who Is An Insured.

D. BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph **8.**, **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

a. "Bodily injury" or "property damage" that occurs; or

b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.

E. CONTRACTUAL LIABILITY – RAILROADS

1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:

c. Any easement or license agreement;

COMMERCIAL GENERAL LIABILITY

2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

F. DAMAGE TO PREMISES RENTED TO YOU

The following replaces the definition of "premises damage" in the **DEFINITIONS** Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**TOTAL AGGREGATE LIMIT OTHER THAN PROJECTS
AND DESIGNATED PROJECT AND LOCATION
AGGREGATE LIMITS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE – LIMITS OF INSURANCE AND DESIGNATED PROJECTS AND LOCATIONS

LIMITS OF INSURANCE

Total Aggregate Limit (Other Than Projects and Products-Completed Operations)	\$ 25,000,000
Designated Location Aggregate Limit (Other Than Products-Completed Operations)	\$ 4,000,000
Designated Project Aggregate Limit (Other Than Products-Completed Operations)	\$ 4,000,000
General Aggregate Limit (Other Than Products-Completed Operations)	\$ 4,000,000

Designated Projects:

Each "project" away from premises owned by or rented to you
Designated Locations: Each premises owned by or rented to you

Designated Locations:

Each premises owned by or rented to you

PROVISIONS

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. The General Aggregate Limit (Other Than Products-Completed Operations) shown in the Declarations is replaced by the Limits of Insurance shown in the Schedule – Limits Of Insurance And Designated Projects And Locations. 2. The following replaces Paragraph 1. of SECTION III – LIMITS OF INSURANCE: | <ol style="list-style-type: none"> 1. The Limits of Insurance shown in the Declarations or the Schedule – Limits Of Insurance And Designated Projects And Locations, whichever apply, and the rules below fix the most we will pay regardless of the number of: <ol style="list-style-type: none"> a. Insureds; b. Claims made or "suits" brought; |
|--|--|

COMMERCIAL GENERAL LIABILITY

- c. Persons or organizations making claims or bringing "suits"; or
 - d. "Projects" or "locations".
3. The following replaces Paragraph 2. of **SECTION III – LIMITS OF INSURANCE:**
2. a. The Total Aggregate Limit shown in the Schedule – Limits Of Insurance And Designated Projects And Locations is the most we will pay for the sum of all amounts under the Designated Location Aggregate Limit and all amounts under the General Aggregate Limit. This includes:
- (1) Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard";
 - (2) Damages under Coverage B; and
 - (3) Medical expenses under Coverage C.
- b. The Designated Project Aggregate Limit shown in the Schedule – Limits Of Insurance And Designated Projects And Locations applies and is further subject to all of the following provisions:
- (1) The Designated Project Aggregate Limit is the most we will pay for the sum of:
 - (a) Damages under Coverage A because of "bodily injury" and "property damage" caused by "occurrences"; and
 - (b) Medical expenses under Coverage C for "bodily injury" caused by accidents;
 that can be attributed only to operations at a single "project".
 - (2) The Designated Project Aggregate Limit applies separately to each "project".
 - (3) The Designated Project Aggregate Limit does not apply to damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard". Instead, the Products-Completed Operations Aggregate Limit described in Paragraph 3. below applies to such damages.
 - (4) The Designated Project Aggregate Limit does not apply to damages
- under Coverage B. Instead, the General Aggregate Limit described in Paragraph 2.d. below applies to such damages.
- (5) Any payments made for damages or medical expenses to which the Designated Project Aggregate Limit applies will reduce the Designated Project Aggregate Limit for the applicable "project". Such payments will not reduce the Total Aggregate Limit, the General Aggregate Limit described in Paragraph 2.d. below, the Designated Project Aggregate Limit for any other "project" or the Designated Location Aggregate Limit.
- c. Subject to the Total Aggregate Limit described in Paragraph 2.a. above, the Designated Location Aggregate Limit shown in the Schedule – Limits Of Insurance And Designated Projects And Locations applies and is further subject to all of the following provisions:
- (1) The Designated Location Aggregate Limit is the most we will pay for the sum of:
 - (a) Damages under Coverage A because of "bodily injury" and "property damage" caused by "occurrences"; and
 - (b) Medical expenses under Coverage C for "bodily injury" caused by accidents;
 that can be attributed only to operations at a single "location".
 - (2) The Designated Location Aggregate Limit applies separately to each "location".
 - (3) The Designated Location Aggregate Limit does not apply to damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard". Instead, the Products-Completed Operations Aggregate Limit described in Paragraph 3. below applies to such damages.
 - (4) The Designated Location Aggregate Limit does not apply to damages ssunder Coverage B. Instead, the General Aggregate Limit described in

Paragraph **2.d.** below applies to such damages.

- (5) Any payments made for damages or medical expenses to which the Designated Location Aggregate Limit applies will reduce:

- (a) The Total Aggregate Limit; and
 (b) The Designated Location Aggregate Limit for the applicable "location".

Such payments will not reduce the General Aggregate Limit described in Paragraph **2.d.** below, the Designated Project Aggregate Limit or the Designated Location Aggregate Limit for any other "location".

- d. Subject to the Total Aggregate Limit described in Paragraph **2.a.** above, the General Aggregate Limit shown in the Schedule – Limits Of Insurance And Designated Projects And Locations applies and is further subject to all of the following provisions:

- (1) The General Aggregate Limit is the most we will pay for the sum of:

- (a) Damages under Coverage **A** because of "bodily injury" and "property damage" caused by "occurrences", and medical expenses under Coverage **C** for "bodily injury" caused by accidents, that cannot be attributed only to operations at a single "project" or a single "location"; and
 (b) Damages under Coverage **B**.

- (2) The General Aggregate Limit does not apply to damages for "bodily injury" or "property damage" included in the "products-completed operations hazard". Instead, the Products-Completed Operations Aggregate Limit described in Paragraph **3.** below applies to such damages.

- (3) Any payments made for damages or medical expenses to which the

General Aggregate Limit applies will reduce:

- (a) The Total Aggregate Limit; and
 (b) The General Aggregate Limit.

Such payments will not reduce the Designated Project Aggregate Limit for any "project" or the Designated Location Aggregate Limit for any "location".

4. The following replaces Paragraph **3.** of **SECTION III – LIMITS OF INSURANCE:**

3. The Products-Completed Operations Aggregate Limit shown in the Declarations is the most we will pay under Coverage **A** for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard". Any payments made for such damages will not reduce the Total Aggregate Limit, the General Aggregate Limit, the Designated Project Aggregate Limit for any "project" or the Designated Location Aggregate Limit for any "location".

5. The following is added to the **DEFINITIONS** Section:

"Location" means any designated location shown in the Schedule – Limits Of Insurance And Designated Projects and Locations that is owned by or rented to you. For the purposes of determining the applicable aggregate limit of insurance, each "location" that includes a premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or waterway, or by a right-of-way of a railroad, will be considered a single "location".

"Project" means any designated project shown in the Schedule – Limits Of Insurance And Designated Projects And Locations that is away from premises owned by or rented to you and at which you are performing operations pursuant to a contract or agreement. For the purposes of determining the applicable aggregate limit of insurance, each "project" that includes a premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or waterway, or by a right-of-way of a railroad, will be considered a single "project".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BLANKET ADDITIONAL INSURED – PRIMARY AND
NON-CONTRIBUTORY WITH OTHER INSURANCE –
CONTRACTORS**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

PROVISIONS

1. The following is added to Paragraph **c.** in **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

This includes any person or organization who you are required under a written contract or agreement, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph **B.5., Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph **a.** and paragraph **d.** of this part **5. Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is a named insured when a written contract or agreement with you, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| <ul style="list-style-type: none"> A. BROAD FORM NAMED INSURED B. BLANKET ADDITIONAL INSURED C. EMPLOYEE HIRED AUTO D. EMPLOYEES AS INSURED E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS G. WAIVER OF DEDUCTIBLE – GLASS | <ul style="list-style-type: none"> H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT J. PERSONAL PROPERTY K. AIRBAGS L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS M. BLANKET WAIVER OF SUBROGATION N. UNINTENTIONAL ERRORS OR OMISSIONS |
|---|---|

PROVISIONS

A. BROAD FORM NAMED INSURED

The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph **c. in A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph **b. in B.5., Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

COMMERCIAL AUTO

permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

D. EMPLOYEES AS INSURED

The following is added to Paragraph **A.1.**, **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph **A.2.a.(2)**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph **A.2.a.(4)**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph **B.7.**, **Policy Period, Coverage Territory**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph **C.**, **Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph **C.**, **Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph **D.**, **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT

The following replaces the last sentence of Paragraph **A.4.b.**, **Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph **A.4.a.**, **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. PERSONAL PROPERTY

The following is added to Paragraph **A.4.**, **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Personal Property

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

K. AIRBAGS

The following is added to Paragraph **B.3.**, **Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion **3.a.** does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b.** and **A.1.c.**, but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph **A.2.a.**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph **A.5.**, **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

COMMERCIAL AUTO

such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph **B.2., Concealment, Misrepresentation, Or Fraud,** of **SECTION IV – BUSINESS AUTO CONDITIONS:**

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

POLICY NUMBER: VTC2K-CO-5643B901-IND-22

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED ENTITY – NOTICE OF CANCELLATION PROVIDED BY US

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION: Number of Days Notice of Cancellation: 30

PERSON OR ORGANIZATION:

Any person or organization to whom you have agreed in a written contract that notice of cancellation of this policy will be given, but only if:

1. You send us a written request to provide such notice, including the name and address of such person or organization, after the first Named Insured receives notice from us of the cancellation of this policy; and
2. We receive such written request at least 14 days before the beginning of the applicable number of days shown in this schedule.

ADDRESS:

The address for that person or organization included in such written request from you to us.

PROVISIONS:

If we cancel this policy for any statutorily permitted reason other than nonpayment of premium, and a number of days is shown for cancellation in the schedule above, we will mail notice of cancellation to the person or organization shown in the schedule

above. We will mail such notice to the address shown in the schedule above at least the number of days shown for cancellation in the schedule above before the effective date of cancellation.

POLICY NUMBER: VTC2JCAP5643B913TIL22

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED ENTITY – NOTICE OF CANCELLATION PROVIDED BY US

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION: Number of Days Notice of Cancellation: 30

PERSON OR ORGANIZATION:

ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF:

1. YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND
2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS SCHEDULE.

ADDRESS:

THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST FROM YOU TO US.

PROVISIONS:

If we cancel this policy for any statutorily permitted reason other than nonpayment of premium, and a number of days is shown for cancellation in the schedule above, we will mail notice of cancellation to the person or organization shown in the schedule

above. We will mail such notice to the address shown in the schedule above at least the number of days shown for cancellation in the schedule above before the effective date of cancellation.

Carrier no: 20001

Endorsement no: WC000313

SAIF policy: 780794 Mckinstry Essention LLC

Waiver of Our Right to Recover from Others Endorsement

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Description: ALL OPERATIONS

Contractor name: Persons and/or organizations with whom the insured-employer is required by written contract to waive subrogation rights.

This endorsement does not alter the rights of an injured worker to pursue recovery from another party or SAIF to receive a statutory share of recoveries by an injured worker, even from the party listed in the schedule.

The premium charge for this endorsement is based on one (1) percent of your manual premium.

Effective date: October 01, 2021

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Countersigned September 27, 2021 at Salem, Oregon



Kerry Barnett
President and Chief Executive Officer

Professional/Pollution Policy #EOC 6738794-09

Contractor's Protective Professional Indemnity And Liability Insurance Policy



THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS FOR **COVERAGE A.1. PROFESSIONAL LIABILITY, COVERAGE A.2 RECTIFICATION, COVERAGE B. PROTECTIVE INDEMNITY, COVERAGE C.1. CONTRACTOR'S POLLUTION LIABILITY AND COVERAGE C.2. MITIGATION.**

UNDER **COVERAGE A.1. PROFESSIONAL LIABILITY**, A **PROFESSIONAL LIABILITY CLAIM** MUST FIRST BE MADE AGAINST THE **INSURED** DURING THE **POLICY PERIOD** OR THE OPTIONAL EXTENDED REPORTING PERIOD, IF PURCHASED, AND REPORTED TO US IN WRITING DURING THE **POLICY PERIOD**, AUTOMATIC EXTENDED REPORTING PERIOD, OR OPTIONAL EXTENDED REPORTING PERIOD, IF APPLICABLE.

UNDER **COVERAGE A.2. RECTIFICATION**, A **RECTIFICATION CLAIM** MUST FIRST BE MADE BY YOU DURING THE **POLICY PERIOD** AND REPORTED TO US IN WRITING DURING THE **POLICY PERIOD** AND CANNOT BE MADE OR REPORTED DURING THE AUTOMATIC EXTENDED REPORTING PERIOD OR OPTIONAL EXTENDED REPORTING PERIOD, IF APPLICABLE.

UNDER **COVERAGE B. PROTECTIVE INDEMNITY**, A **PROTECTIVE CLAIM** MUST FIRST BE MADE BY YOU AGAINST THE **DESIGN PROFESSIONAL** DURING THE **POLICY PERIOD** OR THE OPTIONAL EXTENDED REPORTING PERIOD AND REPORTED TO US IN WRITING DURING THE **POLICY PERIOD** OR OPTIONAL EXTENDED REPORTING PERIOD, IF APPLICABLE.

UNDER **COVERAGE C.1. CONTRACTOR'S POLLUTION LIABILITY**, A **CONTRACTOR'S POLLUTION LIABILITY CLAIM** MUST FIRST BE MADE AGAINST THE **INSURED** DURING THE **POLICY PERIOD** OR THE OPTIONAL EXTENDED REPORTING PERIOD, IF PURCHASED, AND REPORTED TO US IN WRITING DURING THE **POLICY PERIOD**, AUTOMATIC EXTENDED REPORTING PERIOD, OR OPTIONAL EXTENDED REPORTING PERIOD, IF APPLICABLE.

UNDER **COVERAGE C.2. MITIGATION**, A **MITIGATION CLAIM** MUST FIRST BE MADE BY YOU DURING THE **POLICY PERIOD** AND REPORTED TO US IN WRITING DURING THE **POLICY PERIOD** AND CANNOT BE MADE OR REPORTED DURING THE AUTOMATIC EXTENDED REPORTING PERIOD OR OPTIONAL EXTENDED REPORTING PERIOD, IF APPLICABLE.

VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. **CLAIM EXPENSES** REDUCE THE LIMITS OF LIABILITY STATED IN THE DECLARATIONS. READ THE ENTIRE POLICY CAREFULLY TO DETERMINE YOUR RIGHTS, DUTIES, AND WHAT IS AND IS NOT COVERED.

Throughout this policy the words "you" and "your" refer to the **Named Insured** stated in the Declarations. The words "we", "us", and "our" refer to the Company providing this insurance.

Refer to the Definitions Section of this policy for the special meaning of words and phrases that appear in bold.

In consideration of the premium charged, your undertaking to pay the Self-Insured Retention, if any, and in reliance upon the statements in the application made a part hereof, and subject to the Limits of Liability as stated in the Declarations, and the Exclusions, Conditions, and other terms of this policy, we agree with you as follows:

I. COVERAGES

A. Professional Liability and Rectification

1. Professional Liability Insuring Agreement

We shall pay on behalf of the **Insured**, in excess of the applicable Self-Insured Retention stated in the Declarations, all **Damages** and **Claim Expenses** that the **Insured** is legally obligated to pay because of a **Professional Liability Claim** first made against the **Insured** during the **Policy Period** or Optional Extended Reporting Period, if purchased, and reported to us in writing during the **Policy Period**, the Automatic Extended Reporting Period, or the Optional Extended Reporting Period, if applicable, provided that:

- a. the **Claim** arises out of a **Wrongful Act**;
- b. the **Wrongful Act** took place on or after the **Coverage A.1. Professional Liability** Retroactive Date stated in the Declarations and before the end of the **Policy Period**; and
- c. prior to the effective date of the first professional liability policy issued to you and continuously renewed by us, no **Responsible Insured** had any knowledge of any circumstance that could reasonably be expected to result in a **Professional Liability Claim**.

2. Rectification Insuring Agreement

We shall indemnify you for **Rectification Costs and Expenses**, incurred in excess of the applicable Self-Insured Retention stated in the Declarations, because of a **Rectification Claim**, provided that:

- a. a **Claim** is first made by you and reported to us in writing during the **Policy Period**; and
- b. the **Claim** arises out of a **Wrongful Act**:
 - (1) that took place on or after the **Coverage A.2. Rectification** Retroactive Date stated in the Declarations and before the end of the **Policy Period**;
 - (2) for which a covered **Professional Liability Claim** could otherwise be made under **Coverage A.1. Professional Liability**; and
 - (3) prior to the effective date of the first policy issued to you and continuously renewed by us, no **Responsible Insured** had any knowledge of any circumstance that could reasonably be expected to result in a **Rectification Claim**.

Rectification Costs and Expenses may be incurred without prior notice to us within the applicable Self-Insured Retention amount stated in the Declarations, provided a **Rectification Claim** is reported to us in writing during the **Policy Period**. We shall indemnify you for **Rectification Costs and Expenses** incurred in excess of the Self-Insured Retention after we have had a reasonable time to review your notice.

If you and we cannot agree on the amount of indemnification for a **Rectification Claim**, or whether the **Rectification Claim** will be covered under this policy, such dispute will be settled pursuant to Subsection **IX.B. Alternative Dispute Resolution**.

Rectification Emergency Consideration

In an effort to prevent imminent physical injury, including physical injury to tangible property, if you report a **Rectification Claim** to us within thirty (30) days of incurring **Rectification Costs and Expenses** in excess of the Self-Insured Retention and can demonstrate to us the **Rectification Costs and Expenses** were incurred for that purpose, then we shall indemnify you for those **Rectification Costs and Expenses** incurred in excess of the Self-Insured Retention.

Nothing in this Subsection **Rectification Emergency Consideration** alters the claims made and reported requirement set forth in Subsection **I.A.2.a.** of this Coverage.

B. Protective Indemnity

1. Protective Indemnity Insuring Agreement

We shall indemnify you for **Damages** in excess of the **Design Professional's Insurance**, subject to the Limits of Liability and Self-Insured Retention stated in the Declarations respectively, provided that:

- a. a **Protective Claim** is first made by you:
 - (1) against the **Design Professional** under contract to the **Insured**;
 - (2) during the **Policy Period** or the Optional Extended Reporting Period, if purchased; and
 - (3) reported to us in writing during the **Policy Period** or the Optional Extended Reporting Period, if purchased;
- b. the **Protective Claim** arises out of a **Wrongful Act** of the **Design Professional**;

- c. the **Wrongful Act** of the **Design Professional** took place on or after the **Coverage B. Protective Indemnity** Retroactive Date stated in the Declarations and before the end of the **Policy Period**; and
- d. prior to the effective date of the first policy issued to you and continuously renewed by us, no **Responsible Insured** had any knowledge of any circumstance that could reasonably be expected to result in a **Protective Claim**.

2. Protective Indemnity Limit - Conversion Option

If you make a **Protective Claim**, you may elect to convert the **Coverage B. Protective Indemnity** Each **Claim** Limit of Liability to a **Protective Claim Attorneys' Fees and Expenses** Each **Claim** Limit of Liability, subject to the **Coverage A.1. Professional Liability** Self-Insured Retention stated in the Declarations, by notifying the claims representative and the underwriter in writing at the time you submit the notice of the **Claim**. In order to exercise this option, the **Coverage B. Protective Indemnity** Each **Claim** Limit of Liability must be unimpaired by other **Claims**. Once you have exercised this option:

- a. the conversion will remain in effect for the remainder of the **Policy Period**;
- b. all **Protective Claims** submitted prior to or subsequent to the conversion will be converted to the **Protective Claim Attorneys' Fees and Expenses** Each **Claim** Limit of Liability, subject to the **Coverage A.1. Professional Liability** Self-Insured Retention.
- c. coverage under **Coverage A.2. Rectification** will not be available to the **Insured** for the project that is the subject of the **Claim**; and
- d. we shall issue an endorsement that will:
 - (1) change the **Coverage B. Protective Indemnity** Each **Claim** Limit of Liability to zero dollars (\$0); and
 - (2) establish a **Protective Claim Attorneys' Fees and Expenses** Each **Claim** Limit of Liability, which will be twenty percent (20%) of the **Coverage B. Protective Indemnity** Each **Claim** Limit of Liability.

We shall pay on behalf of the **Insured**, in excess of the **Coverage A.1. Professional Liability** Self-Insured Retention, **Protective Claim Attorneys' Fees and Expenses**. The conversion will not increase the **Coverage B. Protective Indemnity** Aggregate Limit of Liability.

C. Contractor's Pollution Liability and Mitigation

1. Contractor's Pollution Liability Insuring Agreements

a. Contractor's Operations

We shall pay on behalf of the **Insured**, in excess of the applicable Self-Insured Retention stated in the Declarations, all **Loss** and **Claim Expenses** that the **Insured** is legally obligated to pay as a result of a **Contractor's Pollution Liability Claim** first made against the **Insured** during the **Policy Period** or Optional Extended Reporting Period, if purchased, and reported to us in writing during the **Policy Period**, the Automatic Extended Reporting Period, or the Optional Extended Reporting Period, if applicable, provided that:

- (1) the **Pollution Event** arises out of **Covered Operations** or **Completed Operations** at a **Jobsite** or **Staging Location**;
- (2) the **Covered Operations** or **Completed Operations** at a **Jobsite** or **Staging Location** took place on or after the **Coverage C.1.a. Contractor's Pollution Liability** Retroactive Date stated in the Declarations and before the end of the **Policy Period**; and
- (3) prior to the effective date of the first contractor's pollution liability policy issued to you and continuously renewed by us, no **Responsible Insured** had any knowledge of any circumstance that could reasonably be expected to result in a **Claim**.

Coverage C.1.a. Contractor's Operations will not apply at **Staging Locations** once all **Covered Operations** at related **Jobsites** become **Completed Operations** at such **Jobsites**.

b. Transportation

We shall pay on behalf of the **Insured**, in excess of the applicable Self-Insured Retention stated in the Declarations, all **Loss** and **Claim Expenses** that the **Insured** is legally obligated to pay as a result of a **Contractor's Pollution Liability Claim** first made against the **Insured** during the **Policy Period** or Optional Extended Reporting Period, if purchased, and reported to us in writing during the **Policy Period**, the Automatic Extended Reporting Period, or the Optional Extended Reporting Period, if applicable, provided that:

- (1) the **Pollution Event** arises out of the **Transportation of Materials** as a result of **Covered Operations**;
- (2) the **Transportation of Materials** as a result of **Covered Operations** took place on or after the **Coverage C.1.b. Transportation** Retroactive Date stated in the Declarations and before the end of the **Policy Period**; and
- (3) prior to the effective date of the first contractor's pollution liability policy issued to you and continuously renewed by us, no **Responsible Insured** had any knowledge of any circumstance that could reasonably be expected to result in a **Claim**.

This coverage will not be utilized to evidence financial responsibility under any federal, state, or local law.

c. Non-Owned Disposal Sites

We shall pay on behalf of the **Insured**, in excess of the applicable Self-Insured Retention stated in the Declarations, all **Loss** and **Claim Expenses** that the **Insured** is legally obligated to pay as a result of a **Contractor's Pollution Liability Claim** first made against the **Insured** during the **Policy Period** or Optional Extended Reporting Period, and reported to us in writing during the **Policy Period**, the Automatic Extended Reporting Period, or the Optional Extended Reporting Period, if applicable, but only if **Bodily Injury** or **Property Damage** results from a **Pollution Event** at, under, resulting from, or that is migrating or has migrated from a **Disposal Site** as a result of **Covered Operations**, provided that:

- (1) neither the **Insured** nor any of the **Insured's** subsidiary companies have ever owned or operated any part of the **Disposal Site**;
- (2) the **Insured** has, by due diligence, determined the **Disposal Site** is licensed and certified by the respective controlling local, state, and federal agency(ies) or authorities to accept **Materials**;
- (3) at the time the **Insured** sent **Materials** to the **Disposal Site**, such location or site was neither on nor proposed for addition to the National Priorities List (NPL), or any state or local equivalent designation or any country's similar listing; and
- (4) the **Covered Operations** or **Completed Operations** at a **Jobsite** or **Staging Location** took place on or after the **Coverage C.1.c. Non-Owned Disposal Sites** Retroactive Date stated in the Declarations and before the end of the **Policy Period**.

d. Time Element Pollution Event – Covered Locations

We shall pay on behalf of the **Insured**, in excess of the applicable Self-Insured Retention stated in the Declarations, all **Loss** or **Cleanup Costs** that the **Insured** is legally obligated to pay as a result of a **Time Element Claim**, provided that the **Pollution Event** is at, on, under, or migrating or has migrated from a **Covered Location** and further provided that the **Pollution Event**:

- (1) is discovered by the **Insured** and confirmed by you at your sole expense as having first commenced at a specific time and place during the **Policy Period** and ends within ten (10) days from when the **Pollution Event** first commenced;
- (2) is reported to us in writing during the **Policy Period**, Automatic Extended Reporting Period, or Optional Extended Reporting Period, if applicable, but not later than thirty (30) days after the **Pollution Event** first commenced;
- (3) took place on or after the **Coverage C.1.d. Time Element Pollution Event – Covered Locations** Retroactive Date stated in the Declarations and before the end of the **Policy Period**; and
- (4) did not occur at, under, or migrate from any **Underground Storage Tank System**.

e. Additional Insured

- (1) We shall pay on behalf of an **Additional Insured**, in excess of the applicable Self-Insured Retention stated in the Declarations, all **Loss** and **Claim Expenses** that the **Additional Insured** is legally obligated to pay as a result of a **Contractor's Pollution Liability Claim** first made against the **Additional Insured** during the **Policy Period** or Optional Extended Reporting Period, if purchased, and reported to us in writing during the **Policy Period**, the Automatic Extended Reporting Period, or the Optional Extended Reporting Period, if applicable, but only if:
- (a) the **Bodily Injury** or **Property Damage** results from a **Pollution Event** under **Coverages C.1.a.** through **d.** above;
 - (b) the **Pollution Event** took place on or after the applicable Retroactive Date stated in the Declarations and before the end of the **Policy Period**; and
 - (c) only with respect to liability for **Loss** that results directly from **Covered Operations** or **Completed Operations** that are the subject of a written contract or written agreement with the **Insured** and performed for the **Additional Insured**.
- (2) However, regardless of the provisions in Subsection **I.C.e.(1)** above:
- (a) we shall not extend any insurance coverage under this policy to any **Additional Insured**:
 - (i) that is not provided to the **Insured** in **Coverages C.1.a.** through **d.**; or
 - (ii) that is broader than any coverage the **Insured** is required to provide to the **Additional Insured** in the written contract or written agreement; and
 - (b) we shall not provide Limits of Liability to any **Additional Insured** that exceed the lower of:
 - (i) the Limits of Liability available to the **Insured** in this policy; or
 - (ii) the Limits of Liability the **Insured** is required to provide in the written contract or written agreement.

Continuous Pollution Events

The following additional provisions apply to **Coverages C.1.a.** through **d.** and Subsection **I.C.1.e. Additional Insured** above:

- (1) Progressive, indivisible **Bodily Injury** or **Property Damage** occurring over multiple policy periods, including any continuation, change, or resumption thereof, caused by the same, related, continuous, or repeated **Pollution Event**, will be deemed to be only one **Pollution Event** and considered first reported at the earlier of the following times:
- (a) The date we first receive written notice of the specific circumstances of the **Pollution Event** from any **Insured**; or
 - (b) The date we first receive written notice of such **Contractor's Pollution Liability Claim** from any **Insured**;
- (2) If the **Pollution Event** giving rise to the progressive, indivisible **Bodily Injury** or **Property Damage** was:
- (a) before the effective date of the first policy period containing the same coverages under this policy issued to you by us,
 - (b) before the **Coverage C.1. Contractor's Pollution Liability** Retroactive Date stated in the Declarations, or
 - (c) cannot be determined;

but the progressive, indivisible **Bodily Injury** or **Property Damage** continues, in fact, to exist during the first policy period containing the same coverages issued to you by us, the **Bodily Injury** or **Property Damage** will be deemed to have occurred only on the effective date of such first policy period.

Notwithstanding the above, this insurance will not apply to any **Claims, Loss, or Claims Expenses** covered in whole or in part under any insurance policy, other than a project-specific insurance policy, in force prior to this policy.

Prior Knowledge

We shall only pay on behalf of:

- (1) the **Insured** in accordance with **Coverages C.1.a.** through **d.** and **Continuous Pollution Events** above, provided that, prior to the effective date of the first pollution policy issued to you and continuously renewed by us, no **Responsible Insured**; or
- (2) an **Additional Insured** in accordance with Subsection **I.C.1.e. Additional Insured** and **Continuous Pollution Events** above, provided that, prior to the effective date of the first pollution policy issued to you and continuously renewed by us, no principal, partner, director, executive officer, manager of covered locations, or employees with specific responsibility for environmental incident reporting, legal affairs, insurance, or risk management for an **Additional Insured**;

had any knowledge of any **Pollution Event** arising out of **Covered Operations** or **Completed Operations** at a **Jobsite** or **Staging Location** that was known to have occurred or any circumstance that could reasonably be expected to result in a **Contractor's Pollution Liability Claim**.

2. Mitigation Insuring Agreement

We shall indemnify you for **Mitigation Costs and Expenses**, incurred in excess of the applicable Self-Insured Retention stated in the Declarations, because of a **Mitigation Claim**, provided that:

- a. the **Mitigation Claim** arises out of a **Pollution Event**, or an imminent **Pollution Event**, resulting from **Covered Operations** or **Completed Operations** at a **Jobsite** or **Staging Location** for which a **Contractor's Pollution Liability Claim** could otherwise be made under the **Coverage C.1.a. Contractor's Operations** Insuring Agreement above;
- b. the **Pollution Event**, or imminent **Pollution Event**, giving rise to the **Mitigation Claim** was first discovered by the **Insured** during the **Policy Period** and reported to us in writing during the **Policy Period**, and
- c. prior to the effective date of the first policy issued to you and continuously renewed by us, no **Responsible Insured** had any knowledge of any circumstance that could reasonably be expected to result in such **Mitigation Claim**.

Mitigation Costs and Expenses may be incurred without prior notice to us within the applicable Self-Insured Retention amount stated in the Declarations, provided a **Mitigation Claim** is reported to us in writing during the **Policy Period**. We shall indemnify you for **Mitigation Costs and Expenses** incurred in excess of the Self-Insured Retention after we have had a reasonable time to review your notice.

If you and we cannot agree on the amount of indemnification for a **Mitigation Claim** or whether the **Mitigation Claim** will be covered under this policy, such dispute will be settled pursuant to Subsection **IX.B. Alternative Dispute Resolution**.

Mitigation Emergency Consideration

In an effort to prevent imminent **Bodily Injury** and **Property Damage**, if you report your **Mitigation Claim** to us within thirty (30) days of incurring **Mitigation Costs and Expenses** in excess of the Self-Insured Retention and can demonstrate to us the **Mitigation Costs and Expenses** were incurred for that purpose, then we shall indemnify you for those **Mitigation Costs and Expenses** incurred in excess of the Self-Insured Retention.

D. Defense

1. We shall have the right and duty to defend with counsel of our choice, and shall pay applicable **Claim Expenses**, with respect to any **Claim** seeking **Damages** or **Loss** to which **Coverage A.1. Professional Liability** or **Coverage C.1. Contractor's Pollution Liability** insurance applies. **Claim Expenses** will reduce the applicable Limit of Liability stated in the Declarations and as described in Section **V. Limits of Liability and Self-Insured Retentions**.

Professional/Pollution Policy #EOC 6738794-09**F. Limitation of Liability**

Solely with respect to **Coverage B. Protective Indemnity**, the **Insured** shall not, without our express written authorization, accept any limitation of liability clause in a contract between the **Insured** and a **Design Professional**. In the event that the **Insured** accepts any limitation of liability clause in a contract between the **Insured** and any **Design Professional** without our express written authorization, our liability will only attach in excess of the remaining available limits of all policies insuring that **Design Professional** but in no event less than the applicable Self-Insured Retention.

G. Other Insurance

1. Except as specifically provided in Subsection **IX.G.2.** below, this policy is excess over any other applicable insurance available to the **Insured**, including but not limited to project-specific policies or wrap-up policies, whether such other insurance is stated to be primary, pro-rata, contributory, excess, contingent, self-insured, or otherwise, unless such other insurance is written specifically excess of this policy by reference in such other policy to this policy number.
 - a. When this policy is excess under this Subsection **IX.G.1.**, neither payments by the **Insured** to satisfy a Self-Insured Retention or Deductible applicable to any underlying policy nor payments by the underlying insurer will satisfy the Self-Insured Retention under this policy.
 - b. When this policy is excess under this Subsection **IX.G.1.** for a claim arising out of **Professional Services**, coverage under **Coverage A.2. Rectification** will not be available to the **Insured**.
 - c. When this policy is specifically written as excess over another insurance policy, Section **II. Supplementary Payments** will not be available to the **Insured**.
 - d. This policy will apply specifically as excess over any project-specific insurance policy subject to its limitations, conditions, provisions, and other terms; provided, however, unless specifically endorsed, this excess coverage will not be broader than the project-specific insurance policy and will not function as Difference in Conditions coverage.
2. Insurance provided under **Coverage C.1. Contractor's Pollution Liability** is primary and non-contributory unless:
 - a. an endorsement states that the coverage is excess or contingent upon the absence of other insurance;
 - b. any other insurance is available to cover liability for any **Loss** arising out of the premises or operations for which the **Insured** has been added as an additional insured on another policy;
 - c. other insurance is provided for **Transportation** under **Coverage C.1.b. Transportation** or non-owned disposal sites under **Coverage C.1.c. Non-Owned Disposal Sites**;
 - d. the **Insured** is not required by written contract or written agreement to provide insurance for an **Additional Insured** under Subsection **I.C.1.e. Additional Insured** on a primary basis; or
 - e. another insurance policy, in force prior to this **Policy Period**, is available to the **Insured** for any **Loss** or **Claim Expenses** also covered under the terms and conditions of this policy, even if the other insurance policy does not provide coverage in whole or in part for the **Loss** or **Claim Expenses**.

The insurance provided under **Coverage C.2. Mitigation** is primary. The coverage under **Coverage C.2. Mitigation** will not be available to the **Insured** on an excess basis.
3. When this policy is excess under Subsection **IX.G.1.** or Subsection **IX.G.2.** above and any other insurance has a duty to defend the **Insured** in a matter for which the **Insured** has notified us of a **Claim**, regardless of whether that other insurance covers the same **Damages, Loss, or Claim Expenses**, we shall have no duty to defend the **Claim** until the limits of all the other insurance have been exhausted by payment of **Claims**. If no other insurer defends and we have a duty to defend the **Claim**, we shall undertake the defense, but we shall be entitled to the **Insured's** rights against all other insurers. When this insurance is excess over other insurance, we shall pay only our share of the amount of the **Damages, Loss, or Claim Expenses**, if any, that exceeds the sum of:
 - a. the total amount that all such other insurance would pay for the **Damages, Loss, or Claim Expenses** in the absence of this insurance; and

- b. the total of all deductible and self-insured amounts under all the other insurance.
- 4. When this insurance and other insurance apply to any payment on the same basis, whether primary, excess, or otherwise, we shall not be liable under this policy for a greater proportion of any payment than set out in the Limits of Liability or the following contribution provision, whichever is lower:
 - a. Contribution by equal shares:

Under this approach, each insurer contributes equal amounts until it has paid its applicable limit or all of the payments have been paid, whichever occurs first; or
 - b. Contribution by limits:

Under this approach, each insurer's share is based on the ratio of its applicable limit to the total available limits.

H. Policy Termination

This policy will terminate at the earliest of the following times:

1. Upon expiration of the **Policy Period** shown in the Declarations;
2. Cancellation as described below:
 - a. This policy may be cancelled by you by surrender thereof to us or any of our authorized representatives or by mailing to us written notice stating when, thereafter, cancellation will be effective;
 - b. If this policy has been in effect for less than sixty (60) days, this policy may be cancelled by us for any reason;
 - c. If this policy has been in effect for sixty (60) days or more or is a renewal of a policy issued by us, this policy may not be cancelled by us except for one (1) or more of the following reasons:
 - (1) Nonpayment of premium; or
 - (2) Fraud or material misrepresentation affecting the policy;
 - d. Written notice of cancellation will be mailed or delivered by us to you at least:
 - (1) fifteen (15) days prior to the effective date of cancellation, if this policy is cancelled for nonpayment of premium; or
 - (2) ninety (90) days prior to the effective date of cancellation, if this policy is cancelled for any other reason;
 - e. Premium:
 - (1) If this policy is cancelled pursuant to Subsection **IX.H.2.a.**, Subsection **IX.H.2.b.** or Subsection **IX.H.2.c.(2)**, we shall refund the unearned premium computed pro rata; or
 - (2) If we cancel for the reason specified in Subsection **IX.H.c.(1)**, there will be no return premium;
3. Nonrenewal:

If we elect not to renew this policy, we shall send written notice of nonrenewal at least sixty (60) days prior to expiration, unless you have obtained replacement coverage with another insurance company;
4. Unless not permitted under applicable state law, we shall have the right to terminate upon:
 - a. your acquisition by, merger into, or consolidation with another entity; or
 - b. the acquisition of fifty percent (50%) or more of your assets by another entity, such that you are not the surviving entity.

Any notice of cancellation or nonrenewal will be given as provided in this Subsection **IX.H. Policy Termination**.

I. Representations

The **Responsible Insureds** represent, warrant, and acknowledge that the Declarations, agreements, representations, and warranties in the written application for this policy are true and complete, are the basis of this policy, and are to be considered as incorporated into and constituting a part of this policy. This policy is issued in reliance upon the truth and completeness of such representations.

J. Separation of Insureds

The written application for this policy will be construed as a separate application by each **Insured**. No statement in the application or knowledge possessed by any **Insured** will be imputed to any other **Insured** for the purpose of determining if coverage is available. Only the statements in the application made by and knowledge possessed by any **Responsible Insured** will be imputed to all **Insureds** for the purpose of determining if coverage is available to the **Insured**.

However, in the event that such written application for this policy contains misrepresentations or omissions made with the intent to deceive or that materially affect either the acceptance of the risk or the hazard assumed by us under the policy, then coverage will be void *ab initio* as to all **Insureds**.

K. Sole Agent

If there is more than one (1) **Named Insured** in this policy, the **Named Insured** that is listed in the Declarations shall act on behalf of all **Insureds** for all purposes, including but not limited to the payment or return of premium, responsibility for payment of any Self-Insured Retention, receipt and acceptance of any endorsement issued to form a part of this policy, complying with all applicable claims provisions, giving and receiving notice of cancellation or nonrenewal, and the exercise of the rights provided in the Automatic Extended Reporting Period, Optional Extended Reporting Period or Subsection **IX.L. Subrogation**.

L. Subrogation

In the event of any payment under this policy, we shall be subrogated to all the **Insureds'** rights of recovery against any person or organization, and the **Insureds** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insureds** shall do nothing to prejudice such rights.

We shall not exercise any such rights against any person(s), firm(s) or corporation(s) included in the definition of **Insured**, against the **Insured's** clients, or as may be required by a written contract or agreement if, prior to the **Claim**, the **Insured** contractually agreed to or entered into a legally enforceable waiver of subrogation.

For any recovery obtained through subrogation, after expenses incurred in such subrogation are deducted by the party bearing the expense, reimbursement will be made in the following order:

1. First, to any interest who has paid any amount in excess of the Limits of Liability provided under this policy;
2. Next, to us; and
3. Then to any interests as are entitled to claim the remainder, if any.

M. Policy Territory

Coverage under this policy will extend to **Claims, Wrongful Acts, Pollution Events** taking place and **Damages** or **Loss** incurred anywhere in the world, where permitted by applicable law. All premiums, Limits of Liability, Self-Insured Retentions, **Damages, Loss, Mitigation Costs and Expenses, Rectification Costs and Expenses, Protective Claim Attorneys' Fees and Expenses, and Claim Expenses**, and any other amounts paid under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated, or another element of **Damages** or **Loss** under this policy is stated in a currency other than United States dollars, payment under this policy will be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the final judgment is reached, the amount of the settlement is agreed upon, or the other element of **Damages** or **Loss** are due, respectively, or, if not published on such date, the next date of publication of *The Wall Street Journal*.

EXHIBIT G: SRC Subscriber Agency Agreement

The Parties understand and agree that the SRC Subscriber Agency Agreements may need to be updated prior to each of the Solar Gardens achieving Commercial Operation due to changes in the final System design or project location. If such changes occur, the Company shall notify the City and provide an updated SRC Subscriber Agency Agreements that the Subscriber will sign and return to the Company prior to a System achieving Commercial Operation.



SRC SUBSCRIBER AGENCY AGREEMENT FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)

SRC Subscriber Name: City and County of Denver

SRC Subscriber Retail Customer Account No.: 5387111051, 5399121161, 5389879018, 5389878426, 5320097030, 5398843775

SRC Subscriber Service Address: 8110 E Lowry Blvd, 9651 E Martin Luther King Blvd, 9225 Martin Luther King Blvd, 8775 Martin Luther King Blvd, 550 E Iliff Ave, 15555 E 53rd Ave

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: (Primary) (Alt.) _____

SRC Producer (Subscriber Organization) Name: McKinstry RDCS 1, LLC

Solar Garden ID No: SRC083126

Name and Location of Solar Garden: CCD-CSG7-Montbello Rec Ctr - 15555 E 53rd Ave, Denver, CO 80239

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"):
212.93 kW

The undersigned SRC Subscriber hereby authorizes McKinstry RDCS 1, LLC ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

4. Term of Agency and Termination.

(a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

5. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber's knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

6. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed "Consent to Disclose Utility Customer Data" form granting consent for Public Service to share information regarding SRC Subscriber's past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber's eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the

Xcel Energy website or the website of the Colorado Public Utilities Commission. IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER _____ SRC PRODUCER _____

By: _____ By: Heath Mackay

Title: _____ Title: Director

Date: _____ Date: _____

Application

Colorado



SRC SUBSCRIBER AGENCY AGREEMENT FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)

SRC Subscriber Name: City and County of Denver

SRC Subscriber Retail Customer Account No.: 5387111051, 5399121161, 5389879018, 5389878426, 5320097030, 5398843775

SRC Subscriber Service Address: 8110 E Lowry Blvd, Denver, CO 80230

SRC Subscriber E-mail Address: 8110 E Lowry Blvd, 9651 E Martin Luther King Blvd, 9225 Martin Luther King Blvd, 8775 Martin Luther King Blvd, 550 E Iliff Ave, 15555 E 53rd Ave

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: (Primary) (Alt.) _____

SRC Producer (Subscriber Organization) Name: McKinstry RDCS 1, LLC

Solar Garden ID No: SRC083127

Name and Location of Solar Garden: CCD-CSG8-DEN1: E 114th Ave and Trussville St, Denver, CO

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"):
239.40 kW

The undersigned SRC Subscriber hereby authorizes McKinstry RDCS 1, LLC ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

4. Term of Agency and Termination.

(a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

5. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber's knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

6. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed "Consent to Disclose Utility Customer Data" form granting consent for Public Service to share information regarding SRC Subscriber's past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber's eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the

Xcel Energy website or the website of the Colorado Public Utilities Commission. IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER _____ SRC PRODUCER _____

By: _____ By: Heath Mackay

Title: _____ Title: Director

Date: _____ Date: _____



SRC SUBSCRIBER AGENCY AGREEMENT FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)

SRC Subscriber Name: City and County of Denver

SRC Subscriber Retail Customer Account No.: 5387111051, 5399121161, 5389879018, 5389878426, 5320097030, 5398843775

SRC Subscriber Service Address: 8110 E Lowry Blvd, 9651 E Martin Luther King Blvd, 9225 Martin Luther King Blvd, 8775 Martin Luther King Blvd, 550 E Iliff Ave, 15555 E 53rd Ave

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: (Primary) (Alt.) _____

SRC Producer (Subscriber Organization) Name: McKinstry RDCS 1, LLC

Solar Garden ID No: SRC083128

Name and Location of Solar Garden: CCD-CSG14-NWC M&O: 5125 Race Court, Denver, CO 80216

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"):
108.01 kW

The undersigned SRC Subscriber hereby authorizes McKinstry RDCS 1, LLC ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

4. Term of Agency and Termination.

(a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

5. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber's knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

6. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed "Consent to Disclose Utility Customer Data" form granting consent for Public Service to share information regarding SRC Subscriber's past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber's eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the

Xcel Energy website or the website of the Colorado Public Utilities Commission. IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER _____ SRC PRODUCER _____

By: _____ By: Heath Mackay

Title: _____ Title: Director

Date: _____ Date: _____



SRC SUBSCRIBER AGENCY AGREEMENT FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)

SRC Subscriber Name: City and County of Denver

SRC Subscriber Retail Customer Account No.: 5387111051, 5399121161, 5389879018, 5389878426, 5320097030, 5398843775

SRC Subscriber Service Address: 8110 E Lowry Blvd, 9651 E Martin Luther King Blvd, 9225 Martin Luther King Blvd, 8775 Martin Luther King Blvd, 550 E Iliff Ave, 15555 E 53rd Ave

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: (Primary) (Alt.) _____

SRC Producer (Subscriber Organization) Name: McKinstry RDCS 1, LLC

Solar Garden ID No: SRC083129

Name and Location of Solar Garden: CCD-CSG4-Lowry Tennis: Sports Blvd. & Fairmount Drive, Denver, CO 80230

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"):
164.36 kW

The undersigned SRC Subscriber hereby authorizes McKinstry RDCS 1, LLC ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

4. Term of Agency and Termination.

(a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

5. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber's knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

6. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed "Consent to Disclose Utility Customer Data" form granting consent for Public Service to share information regarding SRC Subscriber's past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber's eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the

Xcel Energy website or the website of the Colorado Public Utilities Commission. IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER _____ SRC PRODUCER _____

By: _____ By: Heath Mackay

Title: _____ Title: Director

Date: _____ Date: _____



SRC SUBSCRIBER AGENCY AGREEMENT FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)

SRC Subscriber Name: City and County of Denver

SRC Subscriber Retail Customer Account No.: 5387111051, 5399121161, 5389879018, 5389878426, 5320097030, 5398843775

SRC Subscriber Service Address: 8110 E Lowry Blvd, 9651 E Martin Luther King Blvd, 9225 Martin Luther King Blvd, 8775 Martin Luther King Blvd, 550 E Iliff Ave, 15555 E 53rd Ave

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: (Primary) (Alt.) _____

SRC Producer (Subscriber Organization) Name: McKinstry RDCS 1, LLC

Solar Garden ID No: SRC083131

Name and Location of Solar Garden: CCD-CSG6-Central Park Rec Ctr: 9651 M.L.K. Jr Blvd, Denver, CO 80238

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"):
250.71 kW

The undersigned SRC Subscriber hereby authorizes McKinstry RDCS 1, LLC ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

4. Term of Agency and Termination.

(a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

5. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber's knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

6. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed "Consent to Disclose Utility Customer Data" form granting consent for Public Service to share information regarding SRC Subscriber's past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber's eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the

Xcel Energy website or the website of the Colorado Public Utilities Commission. IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER _____ SRC PRODUCER _____

By: _____ By: Heath Mackay

Title: _____ Title: Director

Date: _____ Date: _____



SRC SUBSCRIBER AGENCY AGREEMENT FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)

SRC Subscriber Name: City and County of Denver

SRC Subscriber Retail Customer Account No.: 5387111051, 5399121161, 5389879018, 5389878426, 5320097030, 5398843775

SRC Subscriber Service Address: 8110 E Lowry Blvd, 9651 E Martin Luther King Blvd, 9225 Martin Luther King Blvd, 8775 Martin Luther King Blvd, 550 E Iliff Ave, 15555 E 53rd Ave

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: (Primary) (Alt.) _____

SRC Producer (Subscriber Organization) Name: McKinstry RDCS 1, LLC

Solar Garden ID No: SRC083134

Name and Location of Solar Garden: CCD-CSG13-Harvard Gulch Rec Ctr: 550 E Iliff Ave, Denver, CO 80210

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"):
112.46 kW

The undersigned SRC Subscriber hereby authorizes McKinstry RDCS 1, LLC ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

4. Term of Agency and Termination.

(a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

5. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber's knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

6. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed "Consent to Disclose Utility Customer Data" form granting consent for Public Service to share information regarding SRC Subscriber's past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber's eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the

Xcel Energy website or the website of the Colorado Public Utilities Commission. IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER _____ SRC PRODUCER _____

By: _____ By: Heath Mackay

Title: _____ Title: Director

Date: _____ Date: _____



SRC SUBSCRIBER AGENCY AGREEMENT FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)

SRC Subscriber Name: City and County of Denver

SRC Subscriber Retail Customer Account No.: 5387111051, 5399121161, 5389879018, 5389878426, 5320097030, 5398843775

SRC Subscriber Service Address: 8110 E Lowry Blvd, 9651 E Martin Luther King Blvd, 9225 Martin Luther King Blvd, 8775 Martin Luther King Blvd, 550 E Iliff Ave, 15555 E 53rd Ave

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: (Primary) (Alt.) _____

SRC Producer (Subscriber Organization) Name: McKinstry RDCS 1, LLC

Solar Garden ID No: SRC083135

Name and Location of Solar Garden: CCD-CSG15-NWC SYEC: 5004 Packing House Rd., Denver, CO 80216

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"):
102.75 kW

The undersigned SRC Subscriber hereby authorizes McKinstry RDCS 1, LLC ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

4. Term of Agency and Termination.

(a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

5. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber's knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

6. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed "Consent to Disclose Utility Customer Data" form granting consent for Public Service to share information regarding SRC Subscriber's past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber's eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the

Xcel Energy website or the website of the Colorado Public Utilities Commission. IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER _____ SRC PRODUCER _____

By: _____ By: Heath Mackay

Title: _____ Title: Director

Date: _____ Date: _____



SRC SUBSCRIBER AGENCY AGREEMENT FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)

SRC Subscriber Name: City and County of Denver

SRC Subscriber Retail Customer Account No.: 5387111051, 5399121161, 5389879018, 5389878426, 5320097030, 5398843775

SRC Subscriber Service Address: 8110 E Lowry Blvd, 9651 E Martin Luther King Blvd, 9225 Martin Luther King Blvd, 8775 Martin Luther King Blvd, 550 E Iliff Ave, 15555 E 53rd Ave

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: (Primary) (Alt.) _____

SRC Producer (Subscriber Organization) Name: McKinstry RDCS 1, LLC

Solar Garden ID No: SRC083136

Name and Location of Solar Garden: CCD-CSG9-DEN2: E 114th Ave and Trussville St, Denver, CO

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"):
239.40 kW

The undersigned SRC Subscriber hereby authorizes McKinstry RDCS 1, LLC ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

4. Term of Agency and Termination.

(a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

5. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber's knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

6. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed "Consent to Disclose Utility Customer Data" form granting consent for Public Service to share information regarding SRC Subscriber's past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber's eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the

Xcel Energy website or the website of the Colorado Public Utilities Commission. IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER _____ SRC PRODUCER _____

By: _____ By: Heath Mackay

Title: _____ Title: Director

Date: _____ Date: _____



SRC SUBSCRIBER AGENCY AGREEMENT FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)

SRC Subscriber Name: City and County of Denver

SRC Subscriber Retail Customer Account No.: 5387111051, 5399121161, 5389879018, 5389878426, 5320097030, 5398843775

SRC Subscriber Service Address: 8110 E Lowry Blvd, 9651 E Martin Luther King Blvd, 9225 Martin Luther King Blvd, 8775 Martin Luther King Blvd, 550 E Iliff Ave, 15555 E 53rd Ave

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

SRC Subscriber Telephone No: (Primary) (Alt.) _____

SRC Producer (Subscriber Organization) Name: McKinstry RDCS 1, LLC

Solar Garden ID No: SRC086152

Name and Location of Solar Garden: CCD-CSG-DPS Northeast Early College: 11200 E. 45th Ave. Denver, CO 80239

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"):
118.05 kW

The undersigned SRC Subscriber hereby authorizes McKinstry RDCS 1, LLC ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

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4. Term of Agency and Termination.

(a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either SRC Producer or SRC Subscriber upon Public Service's receipt of notice that SRC Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that SRC Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System.

(c) This Agency Agreement shall automatically terminate upon: (i) the effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or (ii) in the event of an effective assignment by SRC Producer of such contract, where Public Service has consented to such assignment in writing, the effective date of a replacement agency agreement between SRC Subscriber and the new owner or subscriber organization of the PV System that has taken assignment of such contract from SRC Producer.

5. Representation and Acknowledgement. By executing this SRC Subscriber Agency Agreement, SRC Subscriber represents and warrants that the information stated herein is true and correct to the best of SRC Subscriber's knowledge and belief and that SRC Subscriber has signed up for the stated subscription share size in the PV System through SRC Producer.

6. Consent to Disclose Account Information. SRC Subscriber shall provide to Public Service a completed and signed "Consent to Disclose Utility Customer Data" form granting consent for Public Service to share information regarding SRC Subscriber's past and present electric usage at the Service Address(es) identified above in order for SRC Producer independently to verify the extent of SRC Subscriber's eligibility to hold a subscription in the PV System pursuant to Section 40-20-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the

Xcel Energy website or the website of the Colorado Public Utilities Commission. IN WITNESS WHEREOF, this Agency Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER _____ SRC PRODUCER _____

By: _____ By: Heath Mackay

Title: _____ Title: Director

Date: _____ Date: _____

EXHIBIT H: Utility Data Consent Form



Clear form

Consent to Disclose Utility Customer Data

All requested information must be provided for the consent to be valid. This form may be available in other languages. To obtain a copy in another language, please contact inquire@xcelenergy.com. Para obtener una copia de este formulario en español, por favor contacte a su proveedor de servicios públicos

Utility name and contact **Xcel Energy Correspondence Department**

Physical and mailing address **P.O. Box 8, Eau Claire, WI, 54702**

Phone **800.895.4999** Email **datarequest@xcelenergy.com** Fax **866.208.8732**

For additional information, including the utility's privacy policy, visit xcelenergy.com.

To be completed by the data recipient

By signing this form, you allow your utility to give the following information to:

Organization/trade name **McKinstry Essention/McKinstry RCDS 1, LLC**

Contact name (if available) **Heath Mackay**

Physical and mailing address **5005 3rd Ave S, Seattle, WA 98134**

Phone **303-960-6232** Email **heathm@mckinstry.com** Fax _____

This organization will receive the following customer data:

Information from your meter collected by your utility services provider from the following services (check all services that apply):

electric steam natural gas

Information regarding your participation in renewable energy, demand-side management, load management, energy efficiency or other utility programs

Other (specify) _____

This information will be used to:

Provide you with products or services you requested Offer you products or services that may be of interest to you

Determine your eligibility for an energy program Analyze your energy usage

Other (specify) **Community Solar Subscription**

Data collection period

The relevant timeframe associated with the requested data is as follows:

for the period beginning **8/1/2020** and ending **8/1/2022**

You may terminate this consent at any time by sending a written request with your name and service address to your utility.

Consent to Disclose Utility Customer Data

To be completed by the customer

Customer data can provide insight into activities within the premises receiving utility service. Your utility may not disclose your customer data except (1) if you authorize the disclosure, (2) to contracted agents that perform services on behalf of the utility, or (3) as otherwise permitted or required by laws or regulations.

You are not required to authorize the disclosure of your customer data. Not authorizing disclosure will not affect your utility services.

You may access your standard customer data from your utility without any additional charge.

Your utility will have no control over the data disclosed pursuant to this consent, and will not be responsible for monitoring or taking any steps to ensure that the data recipient maintains the confidentiality of the data or uses the data as authorized by you. Please be advised that you may not be able to control the use or misuse of your data once it has been released.

In addition to the customer data described above, the data recipient may also receive the following from your utility: your name; account number; service number; meter number; utility type; service address; premise number; premise description; meter read date(s); number of days in the billing period; utility invoice date; base rate bill amount; other charges including base rate and non-base rate adjustments; taxes; and invoice total amount. Your utility will not provide any other information, including personally identifiable information, such as your Social Security Number or any financial account number, to the data recipient through this consent form.

PLEASE READ THE CUSTOMER DISCLOSURES ABOVE

By signing this form you acknowledge and agree that you are the customer of record for this account and that you authorize your utility service provider to disclose your customer data as specified in this form.

Customer account number 5387111051, 5399121161, 5389879018, 5389878426, 5320097030, 5398843775

Service address 8110 E Lowry Blvd, 9651 E Martin Luther King Blvd, 9225 Martin Luther King Blvd, 8775 Martin Luther King Blvd, 550 E Iliff Ave, 15555 E 53rd Ave

Printed name _____

Signature of customer of record _____ Date signed _____

