

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 **OAK LEAF SOLAR XXIV LLC**, a Colorado limited liability company with offices at 11 East 44th Street, Suite 1200, New York, NY 10017 (“**Power Provider**”), each a “**Party**” and collectively the “**Parties**.”

WITNESSETH:

WHEREAS, the Parties intend that, pursuant to Colo. PUC No. 8 Electric Tariff (“**Tariff**”) and the Producer Agreement, Power Provider’s Solar Garden 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 Power Provider the right to receive bill credits associated with 25.00% of the Energy Output generated by the Solar Garden (“**City’s Allocated Percentage**”) commencing on the Commercial Operation Date 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;

WHEREAS, Colorado law allows the City to purchase an allocated share of Bill Credits associated with the solar energy produced from the Solar Garden and attribute the City’s share of solar energy to one or more of its metered sites. C.R.S. § 40-2-127, *et seq.*, and Rule 3665, 4 CCR 723-3;

WHEREAS, Power Provider will construct, own, operate, and maintain a community solar garden with a total generating capacity rated at approximately 2000 kWp (the “**Solar Garden**”) located at 36585 B East Qunicy Avenue, Watkins, CO 80137;

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

1. **LINE OF AUTHORITY:** The City’s Executive Director of General Services, 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 Power Provider 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 Garden commensurate with the City’s Allocated Percentage, as calculated pursuant to the Producer Agreement and the Tariff, and credited to City by Utility on its monthly invoice for electric service for City Meters.

C. “City Meters” means the meters associated with specific City Utility accounts/premises listed in **EXHIBIT E** as updated from time to time by the Parties.

D. “Commercial Operation” means the condition existing when Power Provider has achieved all of the requirements for commercial operation as set forth in Section 4.3 of the Producer Agreement.

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 Agreement.

F. “Estimated Remaining Payments” means as of any date, the estimated remaining payments to be made through the end of the Term, as reasonably determined and supported by Power Provider.

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

H. “Force Majeure” has the meaning given to it in Section 27.

I. “kWhac” means kilowatt-hour alternating current.

J. “kWp” means kilowatt rated power.

K. “Lender” means any person from whom Power Provider leases the Solar Garden, or any person who has made or will make a loan to or otherwise provide financing to Power Provider with respect to the Solar Garden.

L. “**Producer Agreement**” means that certain Solar*Rewards Community Producer Agreement between Utility and Power Provider dated as of April 24, 2017 and attached hereto as **EXHIBIT G**.

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

N. “**Renewable Energy Credits**” or “**RECs**” shall have the meaning set forth in 4 CCR 723-3-3652(t). 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 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.

O. “**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 Power Provider or the Solar Garden is eligible or which either receives, or any depreciation, expenses, credits, benefits or other federal, state or local tax treatment for which Power Provider or the Solar Garden is eligible or that either receives.

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

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

3. INSTALLATION AND OPERATION OF SOLAR GARDEN:

A. Power Provider shall install the Solar Garden, which, upon the Commercial Operation Date, is targeted to have a combined generating capacity rating as shown in **EXHIBIT B**. Power Provider shall provide the City reasonable notice of the progress of the installation of the Solar Garden and shall provide reasonable notice to the City of the Commercial Operation Date.

B. Power Provider 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 financing for installation and operation of the Solar Garden;
- (ii)** obtain all permits and enter into contracts and agreements required for installation of the Solar Garden;
- (iii)** obtain all necessary authority from Utility or regulatory entities for the operation of Solar Garden; and

- (iv) effect the execution of all agreements required for Utility interconnection of the Solar Garden.

C. Power Provider shall: (i) use commercially reasonable efforts to cause installation of the Solar Garden to be completed and to cause the Commercial Operation Date to be on or before December 31, 2018; or (ii) on such date, notify the City of the actual or estimated Commercial Operation Date. Successful completion of parts (i) - (iv) of Section 3.B shall be conditions precedent to Power Provider's obligations to commission and operate the Solar Garden and otherwise perform its obligations under this Agreement. If the activities contemplated in parts (i) - (iv) of Section 3.B are not completed by June 30, 2019, 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 Date and the Term of this Agreement.

D. Power Provider shall be solely responsible for operation and maintenance of the Solar Garden and shall, at all times during the term of this Agreement, maintain the Solar Garden in good operating condition. Power Provider shall bear all risk of loss with respect to the Solar Garden, and shall have full responsibility for its operation and maintenance in compliance with all laws, regulations and governmental permits.

E. Power Provider and the City hereby agree and acknowledge that the City shall have no responsibility for the Solar Garden operation or maintenance. Neither the City, nor any party related thereto, shall have the right or be deemed to operate the Solar Garden for purposes of Section 7701(e)(4)(A)(i) of the Internal Revenue Code.

F. All property taxes related to the Solar Garden shall be the responsibility of Power Provider.

G. Power Provider shall provide all insurance coverage required by this Agreement between the Parties.

H. Power Provider shall enter into a Producer Agreement with Utility under which Power Provider and Utility take the following actions in the implementation of the solar garden program:

- (i) Power Provider is responsible for operating the 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 the Solar Garden such as the City, and each subscriber's allocated percentage of the Solar Garden's Energy Output.
- (ii) Utility is responsible for accepting deliveries of the Solar Garden's Energy Output; for paying Power Provider for the RECs associated with the Energy Output from the Solar Garden; and for providing each subscriber to the Solar Garden with a Bill Credit on its retail electric service bill

associated with its allocated percentage of the Solar Garden's Energy Output.

I. The Parties acknowledge that the Producer Agreement requires that Power Provider is responsible for answering all questions from City regarding its participation in the Solar Garden. Power Provider is solely responsible for resolving disputes with the Utility or City regarding the accuracy of City's Allocated Percentage. Notwithstanding the foregoing, City acknowledges that the Utility is responsible for resolving disputes with City regarding the applicable rate used to determine the Bill Credit.

J. The Parties share a common desire to generate favorable publicity regarding the Solar Garden and their association with it. The Parties agree that they will, from time to time, issue press releases regarding the Solar Garden 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 Garden 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 the Commercial Operation Date, and continuing for the Term of this Agreement, the City shall purchase from Power Provider at the Purchase Price the right to receive Bill Credits from the Utility proportional to the City's Allocated Percentage of the Solar Garden's Energy Output.

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

5. TERM: The term of the Agreement shall commence upon signature by all required signatories and shall expire twenty (20) years from the Commercial Operation Date (the "**Term**"), unless earlier terminated in accordance with the provisions of this 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 the sum of **TWO MILLION SEVEN HUNDRED NINETY-ONE THOUSAND TWO HUNDRED THIRTY DOLLARS AND NO CENTS (\$2,791,230.00)** over the Term, unless this Agreement is amended to increase such amount.

B. The City's obligation to make payments to the Power Provider shall only extend to monies appropriated by the Denver City Council, paid into the City Treasury, and encumbered for the purposes of this Agreement. Power Provider will retain all rights to the City's Allocated Percentage for the duration of any non-appropriation event. The City will not have the right to receive Bill Credits during the occurrence of a non-appropriation event.

C. Power Provider 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 the City's Allocated Percentage of the Solar Garden's Energy Output for the production month in kWhs. The invoice shall be in form satisfactory to the City. The City agrees that the Executive Director and the Chief Financial Officer of the Department of Finance may from time to time require changes to the format and content of the annual invoice to be submitted by the City.

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

E. The City shall process all invoices for payment received from the Power Provider 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 Power Provider 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 the City's Allocated Percentage of the Solar Garden 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 Power Provider 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 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 Power Provider's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

7. RECS AND TAX INCENTIVES:

A. The City's purchase does not include any RECs or Tax Incentives, and the City disclaims any right to RECs or Tax Incentives associated with the Solar Garden or its ownership or operation.

B. The City acknowledges that Utility will acquire from Power Provider under the Producer Agreement all energy generated by the Solar Garden and all RECs associated with the Solar Garden. 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. Power Provider further represents and warrants to the City that, to the best of its knowledge following due diligence inquiry, no governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to the City) is required in connection with the due authorization, execution and delivery of this Agreement by Power Provider or the performance by Power Provider of its obligations hereunder which Power Provider has reason to believe it will be unable to obtain in due course.

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

- (i) The City is an incorporated municipality with total assets in excess of \$5,000,000.00 as set forth in the City's 2017 Comprehensive Annual Financial Report. 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. City has been given the opportunity to ask questions of, and receive answers from, Power Provider 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 City to evaluate the merits and risks of the purchase of City's Allocated Percentage.
- (ii) City's Allocated Percentage, combined with any other distributed resources serving the City Meters, represents no more than 120% of City's average annual consumption at the City Meters over the last twenty-four (24) months; and

- (iii) City is a retail electric service customer of Utility, and the City Meters are within the same county or adjacent county as the Solar Garden.

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

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. Power Provider 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. Power Provider 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, Power Provider 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 the Power Provider. Power Provider 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 Power Provider. The Power Provider 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. Power Provider shall provide a copy of this Agreement to its insurance agent or broker. Power Provider may not commence services or work relating to the Agreement prior to placement of coverage. Power Provider 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 Power Provider’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. Additional Insureds. For Commercial General Liability and Auto Liability, Power Provider and subcontractor's insurer(s) shall name the City and County of Denver, and its elected and appointed officials, employees and volunteers, as additional insured.

D. Waiver of Subrogation. For all coverages, Power Provider'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 the Power Provider. Power Provider shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and sub-consultants maintain the required coverages. Power Provider 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:

(i) Power Provider hereby makes the material warranties listed below in subparagraph (a) on which the City relies in conditionally waiving the workers' compensation/employer's liability insurance. This rejection of coverage must remain effective throughout the Term of the Agreement. Should the rejection of coverage no longer be in effect, Power Provider shall immediately notify the City. Further, upon the effective date of the rejection, Power Provider shall provide the City with proof of workers' compensation/employer's liability insurance. Before commencing services under the Agreement, Power Provider shall provide the City with documentation that rejection was effected in accordance with § 8-41-202(1), C.R.S. Based on the following warranties and upon receipt of documentation of rejection in accordance with the law, the City conditionally waives the requirement that Power Provider obtain workers' compensation/employer's liability insurance.

(ii) Power Provider does not have any employees and will not employ any persons to perform services under the Agreement. Richard Butt is an officer of the sole member of Power Provider. Should any other persons become an officer of Power Provider, such persons may not perform services under the Agreement. In Richard Butt's capacity as an officer of the sole member of Power Provider, Richard Butt effected rejection of coverages in accordance with § 8-41-202, C.R.S.

(iii) Subject to the conditional waiver above, Power Provider shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

G. Commercial General Liability. Power Provider 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: Power Provider shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all hired and non-owned vehicles used in performing services under this Agreement. Power Provider represents, as material representations upon which the City is relying, that Power Provider does not own any motor vehicles and that in performing Services under the Agreement, Power Provider's owners, officers, directors, and employees use their personal vehicles. Power Provider shall ensure that any person operating a motor vehicle in performing Services under the Agreement shall keep in full force Personal Auto Liability coverage with minimum required limits.

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 City, whichever is earlier.
- (iii) Power Provider 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, the Power Provider will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

11. DEFENSE AND INDEMNIFICATION:

A. Power Provider hereby agrees to defend, indemnify, reimburse and hold harmless 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 City for any acts or omissions of Power Provider or its subcontractors either passive

or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

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

C. Power Provider will defend any and all Claims which may be brought or threatened against City and will pay on behalf of 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 City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Power Provider under the terms of this indemnification obligation. The Power Provider 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:

A. 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.* The Power Provider shall promptly pay when due all taxes, bills, debts and obligations it incurs performing the services under the Agreement.

B. Power Provider agrees that, for federal income tax purposes, the transactions described in the Agreement will be characterized as follows:

- (i)** The City's purchase of an Allocated Percentage as defined above will be treated as a service contract under Internal Revenue Code Section 7701(e).
- (ii)** The City will receive a monthly Bill Credit for the sale of electrical energy produced at an alternative energy facility as allowed by Internal Revenue Code Section 7701(e)(3)(A)(i)(II). Regardless of what any other provision of this Agreement may say to the contrary, the City will not bear any significant financial burden if there is nonperformance by Power Provider under this Agreement, as the phrase "any significant financial burden if there is nonperformance" is used in Section 7701(e)(4)(A)(ii) of the Internal Revenue Code. This prohibition also applies to any party related to the City and includes the City being deemed to bear any financial burden.

- (iii) Regardless of what any other provision of this Agreement may say to the contrary, the City will not be deemed to receive any significant financial benefit if the operating costs of the Solar Garden are less than the standard of performance and/or operation set forth in this Agreement, as the phrase “significant financial benefit if the operating costs of the Solar Garden are less than the standards of performance or operation” is used in Section 7701(e)(4)(A)(iii) of the Internal Revenue Code. This prohibition also applies to any party related to the City.
- (iv) Regardless of what any other provision of this Agreement may say to the contrary, or what any other agreement between Power Provider and City may say to the contrary, the City will not have an option to purchase, and the City will not be required to purchase, any portion of the Solar Garden. This prohibition also applies to any party related to the City.
- (v) Regardless of what any other provision of this Agreement may say to the contrary, the City will have no right to operate the Solar Garden, as that term is used in Internal Revenue Code Section 7701(e)(4)(A)(i). This prohibition also applies to any party related to the City.

C. Power Provider agrees that all tax returns, information statements, reporting requirements, and other filings related to taxes made by either Party will be made so that they comply with the tax characterizations described in paragraphs (i) through (v) above, unless otherwise required to do so by the Internal Revenue Service or law in effect at the applicable time.

13. **CONFLICT OF INTEREST:**

A. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the Power Provider shall not hire, or contract for services with, any employee or officer of the City that would be in violation of 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 Power Provider shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Power Provider represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Power Provider by placing the Power Provider’s own interests, or the interests of any party with whom the Power Provider has a contractual arrangement, in conflict with those of the City. The City will determine the existence of a conflict of interest and provide Power Provider with written notice describing the conflict (“**Conflict Notice**”). Power Provider shall have fifteen (15) calendar days from receipt of the Conflict Notice to cure such conflict. If, after fifteen (15) calendar days from Power Provider’s receipt of the Conflict Notice, Power Provider has not cured the conflict, the City may terminate the Agreement. If Power Provider disputes the existence of a conflict, Power Provider may seek to resolve the dispute pursuant to Section 14 of this Agreement.

14. DISPUTES: Except for invoice-related disputes, which shall be governed by Section 6.G of the Agreement, all other disputes between the City and Power Provider 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 Power Provider may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Power Provider shall insert the foregoing provision in all subcontracts relating to the performance of this Agreement.

16. COMPLIANCE WITH ALL LAWS: Power Provider shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States and 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 the 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, to the extent there are sufficient insurance or condemnation proceeds available to Power Provider, Power Provider 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) terminate the Agreement.

18. DEFAULTS AND REMEDIES:

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

- (i) Power Provider admits in writing that a Bankruptcy Event has occurred with respect to Power Provider;
- (ii) Power Provider fails to pay the City any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from the City of such past due amount;
- (iii) Power Provider breaches any material term of this Agreement and (A) Power Provider fails to cure the breach within thirty (30) days after receipt of written notice from the City, or (B) Power Provider fails to commence and pursue a cure within a reasonable time if a period greater than thirty (30) days is necessary to cure Power Provider Default; or
- (iv) The Producer Agreement is terminated for any reason.

B. City's Remedies. If a Power Provider 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 Power Provider and exercise any other remedy it may have at law or equity or under the Agreement. In the event of such termination, 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;
- (ii) The City fails to pay Power Provider any undisputed amount due to Power Provider under the Agreement within thirty (30) days from receipt of notice from Power Provider of such past due amount; and
- (iii) The City breaches any material term of this Agreement and (A) the City fails to cure the breach within thirty (30) days after receipt of written notice from Power Provider of such breach, or (B) the City fails to commence and pursue said cure within a reasonable time if a period greater than thirty (30) days is necessary to cure City Default.

D. Power Provider'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, Power Provider may terminate this Agreement upon written notice to City, sell the City's Allocated Percentage to one or more persons other than the City, recover from City actual, reasonable and verifiable damages, and Power Provider may exercise any other remedy it may have at law or equity or under this Agreement. In the event of such termination, Power Provider shall use reasonable efforts to mitigate its damages.

19. GOVERNING LAW; VENUE: The Agreement will be governed by and construed in accordance with the laws of the State of Colorado without reference to any choice of law principles. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado Second Judicial District.

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 any pertinent books, documents, papers and records of the Power Provider, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

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.

21. TERMINATION:

A. Each 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. Power Provider may terminate this Agreement in accordance with Section 17.

C. The City may terminate this Agreement for convenience upon ninety (90) days' notice to Power Provider. If the City terminates the Agreement pursuant to this Section 21.C, Power Provider shall have the right to recover from the City (A) the sum of (x) an amount equal to the Estimated Remaining Payments from and after the date of termination to and including the earlier to occur of the date of Power Provider's execution of a new subscription agreement with a replacement subscriber (the "**New Contract**") or the twelve-month anniversary of the date of termination, plus (y) if the New Contract contains payment terms that are less favorable to Power Provider than the payment terms under this Agreement, an amount equal to the difference between the Estimated Remaining Payments and the estimated payments to be made under the New Contract for each month (or portion thereof) from and after the execution date of the New Contract to the twentieth anniversary of the Commercial Operation Date, plus (z) lost renewable energy credit revenues, if any, under the Producer Agreement that would have been associated with the Allocated Percentage under this Agreement for the applicable period, minus (B) the amount of any revenues received by Power Provider from Utility under Section 2.6 of the Producer Agreement for the applicable period. If, for any applicable period, the difference between the sum determined under clause (A) above minus the amount determined under clause (B) above is less than zero, no payment shall be due from either Party. In the event of such termination by the City, Power Provider shall in good faith make all reasonable efforts to mitigate its damages.

D. Nothing herein shall be construed as giving the Power Provider the right to perform services under the Agreement beyond the time when the written termination notice is sent to the Power Provider.

E. 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.

F. Power Provider Termination Before Commercial Operation. If any of the following events or circumstances occur before the Commercial Operation Date, the Power Provider 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:

- (i) After the performance of due diligence using industry standard methods and techniques, there exist site conditions (including environmental

conditions and ecological concerns such as presence of wildlife species) at the premises or construction requirements that could not have been reasonably known or discovered through due diligence as of the date of this Agreement and that could reasonably be expected to materially increase the cost of installation work or would adversely affect the electricity production from the Solar Garden as designed;

- (ii) There has been a material adverse change in the (i) rights of Power Provider to construct the Solar Garden on the premises, or (ii) financial prospects or viability of the Solar Garden, whether due to market conditions, cost of equipment or any other reason;
- (iii) After timely application to Utility and best efforts to secure interconnection services, Power Provider has not received evidence that interconnection services will be available at reasonable cost to Power Provider with respect to energy generated by the Solar Garden; or
- (iv) After the performance of due diligence using industry standard methods and techniques, Power Provider has determined and did not previously know that there are easements, other liens or encumbrances, or other facts, circumstances or developments that would materially impair or prevent, or have a material adverse effect on, the installation, operation, maintenance or removal of the Solar Garden.

G. City Termination Prior to the 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:

- (i) Utility or another party with the authority to do so disqualifies the Power Provider of the facility from treatment as Power Provider of the Solar Garden under Colorado Statutes or PUC order.

22. ASSIGNMENT:

A. Assignment by Power Provider.

- (i) Power Provider shall not assign this Agreement or any interest therein, without the prior written consent of the City, except as part of a Permitted Assignment as defined in Section 22.A(ii). Power Provider 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.
- (ii) **Permitted Assignment.** Power Provider may, without the consent of the City, (1) transfer, pledge or assign all of its rights and obligations

hereunder as security for any financing and/or sale-leaseback transaction or to an affiliated special purpose entity created for financing or tax credit purposes related to the Solar Garden, (2) transfer or assign this Agreement to any person or entity succeeding to all of the assets of Power Provider; provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof, (3) assign this Agreement to one or more affiliates; provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof, or (4) assign its rights under this Agreement to a successor entity in a merger or acquisition transaction; provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof. The City agrees to provide acknowledgments or certifications reasonably requested by any Lender in conjunction with any financing of the Solar Garden.

- (iii) In the event of a Permitted Assignment by Power Provider of its interest in this Agreement to a person who has assumed, in writing, all of Power Provider's obligations under this Agreement, Power Provider shall be released from any and all further obligations hereunder, and the City agrees to look solely to such successor-in-interest of the Power Provider for performance of such obligations.

B. Assignment by the City.

- (i) The City shall not assign this Agreement or any interest herein without the prior written consent of Power Provider; provided, however, that Power Provider shall not unreasonably withhold, condition or delay its consent.
- (ii) The City does not need Power Provider's consent to: (a) 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; (b) assign this Agreement to another governmental entity in the event the State of Colorado reassigns responsibility to such other governmental entity for providing the services currently undertaken by the City at the facilities associated with the City Meters; or (c) assign this Agreement to another governmental entity with comparable investment credit rating and that otherwise meets the requirements of the community solar garden program. For such changes under this Section 22.B(ii), the City will notify Power Provider in writing and Power Provider will inform Utility as necessary of the change as soon as practicable.
- (iii) The City's request for Power Provider's consent to any proposed change or assignment as contemplated in Section 22.B(i) must be in writing and provided to Power Provider 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 and within the same county as the Solar Garden or a contiguous county; (b) such assignee shall have a comparable credit rating to that of the City; (c) such assignee is eligible to receive Bill Credits from the Solar Garden 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 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.

- (iv) Upon any assignment of this Agreement pursuant to this Section 22.B, the City will surrender all right, title and interest in and to this Agreement. No assignment will extend the Term of this Agreement.
- (v) **Processing Changes.** Assignments of this Agreement or any interest therein by the City may take up to ninety (90) days to complete, depending on the accuracy of the information Power Provider receives and the timely completion and return by the City of the documents Power Provider requires.

C. Power Provider and the City agree that any assignment of this Agreement is not intended as the offer or sale of a security, and the Power Provider 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 Power Provider 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 City and the Power Provider, 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 City and the Power Provider that any person other than the City or the Power Provider receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

24. INDEPENDENT CONTRACTOR: Power Provider 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 Power Provider is a partner, joint venturer, agent or representative of the City. Neither the City nor Power Provider shall represent to others that one Party is a partner, joint venturer, agent or representative of, or otherwise associated with, the other Party. The Power Provider 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 City or Power Provider 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:

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

With a copy to: Denver City Attorney's Office
Municipal Operations Section
201 West Colfax, Dept. 1207
Denver, Colorado 80202

Power Provider: Oak Leaf Solar XXIV LLC
11 East 44th Street, Suite 1200
New York, New York 10017
Phone: 646-556-6611
Email: Richard.Butt@greenbackercapital.com
Attention: Richard Butt

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 Power Provider or Executive Director.

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. FORCE MAJEURE: Power Provider shall not be liable to the City for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement to the extent such failure, delay or interruption is due to causes which were not reasonably foreseeable and are beyond the control of Power Provider, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots,

rebellion, sabotage or any other circumstance for which Power Provider is not responsible or which is not in its power to control.

28. 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.

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: No modification of this Agreement shall be effective except by written amendment executed by the Parties; provided, however, if the City has been notified that Power Provider has assigned any of its rights, duties or obligations under this Agreement to a Lender, then the prior written consent of Lender is required as well.

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: Power Provider 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.

39. LENDER PROVISIONS:

A. Lender Collateral Assignment. The City hereby:

- (i) Acknowledges and consents to the sale, assignment, conveyance, pledge or collateral assignment by Power Provider to any Lender, of Power Provider's right, title and interest in, to and under this Agreement, as consented to under Section 22 of this Agreement;
- (ii) Acknowledges that any Lender as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Power Provider's interests in this Agreement; and
- (iii) Acknowledges that it has been advised that Power Provider may grant a security interest in the Solar Garden to a Lender and that the Lender may rely upon the characterization of the Solar Garden as personal property, as agreed in this Agreement, in accepting such security interest as collateral for its financing of the Solar Garden.

B. Lender Cure Rights upon System Owner Default. Upon any Event of Power Provider Default, a copy of any notice delivered under Section 18 shall be delivered concurrently by the City to any Lender at the addresses provided in writing by Power Provider to the City. Following receipt by any Lender of any notice that Power Provider is in default in its obligations under this Agreement, such Lender shall have the right but not the obligation to cure any such default, and the City agrees to accept any cure tendered by the Lender on behalf of Power

Provider in accordance with the following: (a) a Lender shall have the same period after receipt of a notice of default to remedy a Power Provider Default, or cause the same to be remedied, as is given to Power Provider after Power Provider's receipt of a notice of default hereunder; provided, however, that any such cure periods shall be extended for the time reasonably required by the Lender to complete such cure, including the time required for the Lender to obtain possession of the Solar Garden (including possession by a receiver), institute foreclosure proceedings or otherwise perfect its right to effect such cure, but in no event longer than one hundred eighty (180) days; and (b) the Lender shall not be required to cure any Power Provider Default that is not reasonably susceptible of being cured or performed by Lender. The Lender shall have the absolute right to substitute itself or an affiliate for Power Provider and perform the duties of Power Provider hereunder for purposes of curing such Power Provider Default. The City expressly consents to such substitution, and authorizes the Lender or its affiliates (or either of their employees, agents, representatives or contractors) to enter upon the premises to complete such performance with all of the rights and privileges of Power Provider, but subject to the terms and conditions of this Agreement. The City shall be protected and shall incur no liability in acting or proceeding in good faith upon any such foregoing direction by Lender which the City shall in good faith believe to be genuine. The City shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such foregoing direction from Lender, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements. Except as otherwise set forth in this Article 39, the Parties' respective obligations will remain in effect during any cure period. If the Lender (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Power Provider assets and shall, within the time periods described in Section **Error! Reference source not found.**38.C above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

List of Exhibits:

EXHIBIT A: SRC Subscriber Agency Agreement & Utility Data Consent Form

EXHIBIT B: Description of Solar Garden System and Location

EXHIBIT C: Pricing Schedule

EXHIBIT D: Estimated Annual Energy

EXHIBIT E: City Meters

EXHIBIT F: Insurance ACORD Certificate

EXHIBIT G: Producer Agreement

Remainder of page left intentionally blank

Contract Control Number:

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:

By _____


By _____

By _____



Contract Control Number: GENRL-201844073-00

Contractor Name: OAK LEAF SOLAR XXIV LLC

By: 

Name: Richard C. Burr
(please print)

Title: Chief Financial Officer
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Exhibit A

Subscriber Agency Agreement and Consent Form

SRC SUBSCRIBER AGENCY AGREEMENT

FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY PROGRAM

SRC Subscriber Name: **CITY & COUNTY OF DENVER**

SRC Subscriber Retail Customer Account Number: **2010076**

SRC Subscriber Service Address: **1431 Bannock Street, Denver, CO 80202**

SRC Subscriber E-mail Address: David.Basich@denvergov.org

SRC Subscriber Mailing Address: 201 W. Colfax Avenue, Dept. 904, Denver, CO 80202

SRC Subscriber Phone Number: 720-913-5780

SRC Producer (Subscriber Organization) Name: Oak Leaf Solar XXIV LLC

Solar Garden ID: **SRC053967**

Location of Solar Garden: **36585 B East Quincy Avenue, Watkins, CO 80137**

SRC Subscriber's Initial Subscription Share: **499.276**

The undersigned SRC Subscriber hereby authorizes Oak Leaf Solar XXIV 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 40-2-127, 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 (b) 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.

6. 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.

7. 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:
see City Signature page

SRC PRODUCER


for (See Attached SRC Producer

Print Name: _____

Print Name: Richard C. B. D.

Date: _____

Date: 9/21/08

SRC Producer	Solar Garden ID	Location of Solar Garden	Subscriber Service Address	Retail Customer Account Number	Premise Number	Initial Subscription Share
Oak Leaf Solar XXI LLC	SRC053964	29100 B E Quincy Avenue, Watkins, CO 80137	1431 Bannock Street	2010076	301782013	297.570
Oak Leaf Solar XXII LLC	SRC053965	27400 E 114th Ave, Denver, CO 80249	1371 Cherokee Street	0331660	304268665	249.927
Oak Leaf Solar XXIII LLC	SRC053966	5900 Hudson Road, Watkins CO 80137	1371 Cherokee Street	0331660	304268665	499.275
Oak Leaf Solar XXIV LLC	SRC053967	36585 B E. Quincy Avenue, Watkins, CO 80137	1431 Bannock Street	2010076	301782013	499.276
Oak Leaf Solar XXV LLC	SRC053968	39299 E. Qunicy Avenue, Watkins, CO 80137	1431 Bannock Street	2010076	301782013	394.860
Oak Leaf Solar XXV LLC	SRC053968	39299 E. Qunicy Avenue, Watkins, CO 80137	303 W Colfax Avenue	2010064	300688166	104.415
Oak Leaf Solar XXVI LLC	SRC053970	27905 E 112th Ave, Denver, CO 80249	303 W Colfax Avenue	2010064	300688166	499.327

CONSENT TO DISCLOSE UTILITY CUSTOMER DATA

CO

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: 1-800-895-4999 Email: datarequest@xcelenergy.com Fax: 1-866-208-8732

For additional information, including the utility's privacy policy, visit xcelenergy.com.

By signing this form, you allow your utility to give the following information to:

Organization/Trade Name: Oak Leaf Energy Partners

Contact Name (if available): Michael McCabe

Physical and Mailing Address: 2645 E. 2nd Avenue, Suite 206, Denver, CO 80206

Phone: 303-893-6945 Email: csg@oakleafep.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) _____

DATA COLLECTION PERIOD

The relevant timeframe associated with the requested data is from 1/1/15 and will:

end on ____/____/____

be effective until terminated by you.

You may terminate this consent at any time by sending a written request with your name and service address to your utility.

PLEASE READ THE CUSTOMER DISCLOSURES ON PAGE 2 OF THIS FORM

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.

See Attached

CUSTOMER ACCOUNT NUMBER

See Attached

SERVICE ADDRESS

D. O. J. B.
SIGNATURE OF CUSTOMER OF RECORD

David Basich

PRINTED NAME

6/11/18

DATE SIGNED

To be completed by the Data Recipient

To be completed by the Customer

CUSTOMER DISCLOSURES

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.

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 your Social Security Number or any financial account number to the data recipient.

Account Number	Service Address
5320100763	1431 BANNOCK ST DENVER, CO
5303316609	1371 CHEROKEE ST DENVER, CO
5320100649	303 W. COLFAX AVE DENVER, CO



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Exhibit B- Description of Premises and System

Solar System Location:	36585 B East Quincy Avenue, Watkins, Colorado Arapahoe County
Solar System Size:	Up to 2000 kW (DC) (representing an initial estimate, which may vary depending on the final design of the System)
Subscriber's Allocated Percentage:	Allocated Percentage: 25.00%
Anticipated Commercial Operation Date:	[To be inserted once PSCO completes its interconnection study].
PSCO Unique Garden Identifier:	SRC053967

Legal Description: Oak Leaf Solar XXIV – Tebo 1 - Leased Premises:

A parcel of land located in the southwest quarter of Section 4, Township 5 South, Range 64 West of the 6th Principal Meridian, said parcel being more particularly described as follows:

Basis of bearing of this description is along the south line of the southwest quarter of said Section 4, assumed to bear South 89 degrees 43 minutes 03 seconds East, a distance of 5299.30 feet from an aluminum cap w/PLS 35200 at the southwest corner of said Section 4 to an aluminum cap w/PLS 35200 at the southeast corner of said Section 4;

Commencing at the southwest corner of said Section 4; thence South 89 degrees 43 minutes 03 seconds East along the south line of said southwest quarter, a distance of 2621.69 feet; thence North 00 degrees 17 minutes 50 seconds East, a distance of 521.03 feet to the point of beginning.

Thence North 90 degrees 00 minutes 00 seconds West, a distance of 334.65 feet; thence North 00 degrees 00 minutes 00 seconds East, a distance of 254.67 feet; thence North 90 degrees 00 minutes 00 seconds West, a distance of 750.76 feet; thence North 00 degrees 00 minutes 00 seconds East, a distance of 184.47 feet; thence North 71 degrees 13 minutes 23 seconds East, a distance of 917.08 feet; thence North 90 degrees 00 minutes 00 seconds East, a distance of 220.73 feet; thence South 00 degrees 16 minutes 48 seconds West; a distance of 734.35 feet to the point of beginning.

Said parcel contains 479,024.50 square feet or 11.00 acres, more or less.

Access Easement:

A parcel of land located in the southwest quarter of Section 4, Township 5 South, Range 64 West of the 6th Principal Meridian, said parcel being more particularly described as follows:

Basis of bearing of this description is along the south line of the southwest quarter of said Section 4, assumed to bear South 89 degrees 43 minutes 03 seconds East, a distance of 5299.30 feet from an aluminum cap w/PLS 35200 at the southwest corner of said Section 4 to an aluminum cap w/PLS 35200 at the southeast corner of said Section 4;

Commencing at the southwest corner of said Section 4; thence South 89 degrees 43 minutes 03 seconds East, along the south line of said southwest quarter, a distance of 1476.71 feet to a point on said south line;

Thence North 00 degrees 17 minutes 52 seconds East, a distance of 55.00 feet to the point of beginning;

Thence North 00 degrees 17 minutes 52 seconds East, a distance of 15.10 feet; thence North 18 degrees 47 minutes 11 seconds East, a distance of 31.53 feet; North 00 degrees 17 minutes 52 seconds East, a distance of 90.34 feet; thence on a curve to the left having a radius of 610.00 feet and a central angle of 61 degrees 15 minutes 46 seconds, a length of 652.23 feet; thence North 60 degrees 57 minutes 54 seconds West, a distance of 132.34 feet; thence North 71 degrees 13 minutes 23 seconds East, a distance of 507.94 feet; thence South 00 degrees 00 minutes 00 seconds East, a distance of 31.69 feet; thence South 71 degrees 13 minutes 23 seconds West, a distance of 351.78 feet; thence South 00 degrees 00 minutes 00 seconds East, a distance of 66.71 feet; thence on a curve to the right having a radius of 640.00 feet and a central angle of 59 degrees 26 minutes 45 seconds, a length of 664.02 feet; thence South 00 degree 17 minutes 52 seconds West, a distance of 90.33 feet; thence South 18 degrees 47 minutes 11 seconds East, a distance of 47.61 feet to the south line of said southwest quarter; thence North 89 degrees 43 minutes 03 seconds West, a distance of 55.50 feet to the point of beginning.

Said parcel contains 44,244 square feet or 1.02 acres, more or less.

Exhibit C – Pricing Schedule

Oak Leaf Solar XXIV LLC					
Year	Generating Facility kWh	Subscriber Percentage	Subscriber kWh	Subscription Rate	Total Subscription Payment
1	3,890,351	25.00%	972,590	\$0.06585	\$ 64,045
2	3,870,899	25.00%	967,727	\$0.06677	\$ 64,617
3	3,851,545	25.00%	962,888	\$0.06771	\$ 65,194
4	3,832,287	25.00%	958,074	\$0.06865	\$ 65,776
5	3,813,125	25.00%	953,283	\$0.06962	\$ 66,364
6	3,794,060	25.00%	948,517	\$0.07059	\$ 66,956
7	3,775,089	25.00%	943,774	\$0.07158	\$ 67,554
8	3,756,214	25.00%	939,055	\$0.07258	\$ 68,157
9	3,737,433	25.00%	934,360	\$0.07360	\$ 68,766
10	3,718,746	25.00%	929,688	\$0.07463	\$ 69,380
11	3,700,152	25.00%	925,040	\$0.07567	\$ 70,000
12	3,681,651	25.00%	920,415	\$0.07673	\$ 70,625
13	3,663,243	25.00%	915,813	\$0.07781	\$ 71,255
14	3,644,927	25.00%	911,233	\$0.07889	\$ 71,892
15	3,626,702	25.00%	906,677	\$0.08000	\$ 72,534
16	3,608,569	25.00%	902,144	\$0.08112	\$ 73,181
17	3,590,526	25.00%	897,633	\$0.08226	\$ 73,835
18	3,572,573	25.00%	893,145	\$0.08341	\$ 74,494
19	3,554,710	25.00%	888,679	\$0.08457	\$ 75,160
20	3,536,937	25.00%	884,236	\$0.08576	\$ 75,831
Total					\$ 1,395,615

Project	Expected Contract Amount per Exhibit C	Max Contract per SA Section 6.A
Oak Leaf Solar XXIV	\$ 1,395,615	\$ 2,791,230

Exhibit D Estimated Annual Energy.

Estimated Annual Delivered Energy commencing on the Commercial Operation Date, and continuing through the Term, with respect to System under the Agreement shall be based on the kWh Rate described in Section 6.A. Estimated production (which will be updated upon final completion) and allocation to Subscriber is listed below:

Year	Total Garden Output (kWh)	Subscriber Percentage	Estimated Annual Delivered Energy (kWh)
1	3,890,351	25.00%	972,590
2	3,870,899	25.00%	967,727
3	3,851,545	25.00%	962,888
4	3,832,287	25.00%	958,074
5	3,813,125	25.00%	953,283
6	3,794,060	25.00%	948,517
7	3,775,089	25.00%	943,774
8	3,756,214	25.00%	939,055
9	3,737,433	25.00%	934,360
10	3,718,746	25.00%	929,688
11	3,700,152	25.00%	925,040
12	3,681,651	25.00%	920,415
13	3,663,243	25.00%	915,813
14	3,644,927	25.00%	911,233
15	3,626,702	25.00%	906,677
16	3,608,569	25.00%	902,144
17	3,590,526	25.00%	897,633
18	3,572,573	25.00%	893,145
19	3,554,710	25.00%	888,679
20	3,536,937	25.00%	884,236
Total	74,219,739	25.00%	18,554,971

* For the purposes of the table Term year 1 begins on the Commercial Operation Date

The values in the table above are estimates of (i) the kWhs of Delivered Energy expected to be generated annually by the System and (ii) the portion of the Delivered Energy generated annually that is to be allocated to Subscriber pursuant to Subscriber's Allocated Percentage, which amount is derived by multiplying the estimated Delivered Energy by the Subscriber's Allocated Percentage in each year. Due to rounding, the values in this Exhibit may not be exact. The table will be updated upon final design of the System; provided, however, any such updated values are also estimates. Estimated Delivered Energy may be reduced if the system size is reduced due to square footage limitations on the leased land. Operator used the following methodology to develop the above production projections: National Renewable Energy Laboratory's PVWatts and SAM software tools.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.

Exhibit E - City Meters

Oak Leaf Garden	Garden ID	Service Address	Account Number	Premise Number	Tarriff	Subscribed kwh	Subscribed kW
Oak Leaf Solar XXIV LLC	SRC053967	1431 Bannock Street	2010076	301782013	SG	972,590	499.276



EXHIBIT F

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/28/2018

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: Arthur J. Gallagher & Co. Insurance Broker of CA, Inc. LIC #0726293
INSURED: GREEREN-06 Oak Leaf Solar XXIV LLC
CONTACT NAME: Nick Rafter
INSURER(S) AFFORDING COVERAGE: INSURER A: Charter Oak Fire Insurance Company, INSURER B: Travelers Indemnity Co of America, INSURER C: Travelers Property Casualty Co of America

COVERAGES CERTIFICATE NUMBER: 469237590 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, POLICY EXP, LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liab, and Workers Compensation.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City and County of Denver, and its elected and appointed officials, employees and volunteers, are added as additional insureds with respect to the general and automobile liability per written contract.

CERTIFICATE HOLDER CANCELLATION

Certificate holder: The 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.

OTHER INSURANCE – ADDITIONAL INSUREDS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

COMMERCIAL GENERAL LIABILITY CONDITIONS (Section **IV**), Paragraph **4. (Other Insurance)**, is amended as follows:

1. The following is added to Paragraph a. Primary Insurance:

However, if you specifically agree in a written contract or written agreement that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance 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, provided that:

- a.** The "bodily injury" or "property damage" for which coverage is sought occurs; and

- b.** The "personal injury" or "advertising injury" for which coverage is sought arises out of an offense committed

subsequent to the signing and execution of that contract or agreement by you.

- 2.** The first Subparagraph **(2)** of Paragraph **b. Excess Insurance** regarding any other primary insurance available to you is deleted.

- 3.** The following is added to Paragraph **b. Excess Insurance**, as an additional subparagraph under Subparagraph **(1)**:

That is available to the insured when the insured is added as an additional insured under any other policy, including any umbrella or excess policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**BLANKET ADDITIONAL INSURED
(CONTRACTORS)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. WHO IS AN INSURED – (Section II) is amended to include any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:
 - a) Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
 - b) If, and only to the extent that, the 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 requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.
 - c) The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.
2. The insurance provided to the additional insured by this endorsement is limited as follows:
 - a) In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.
 - b) The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
 - i. 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
 - ii. Supervisory, inspection, architectural or engineering activities.
3. The insurance provided to the additional insured by this endorsement is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if the "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under such "other insurance".
4. As a condition of coverage provided to the additional insured by this endorsement:
 - a) The additional insured must 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:

COMMERCIAL GENERAL LIABILITY

- i. How, when and where the "occurrence" or offense took place;
 - ii. The names and addresses of any injured persons and witnesses; and
 - iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b) If a claim is made or "suit" is brought against the additional insured, the additional insured must:
- i. Immediately record the specifics of the claim or "suit" and the date received; and
 - ii. Notify us as soon as practicable.
- The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c) The additional insured must 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.
- d) The additional insured must tender the defense and indemnity of any claim or "suit" to

any provider of "other insurance" which would cover the additional insured for a loss we cover under this endorsement. However, this condition does not affect whether the insurance provided to the additional insured by this endorsement is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured as described in paragraph 3. above.

5. The following definition is added to SECTION V. – DEFINITIONS:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR SERVICE INDUSTRIES – NEW YORK

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. 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.

- | | |
|---|---|
| A. Broadened Named Insured | I. Amended Bodily Injury Definition |
| B. Blanket Additional Insured – Broad Form Vendors | J. Bodily Injury To Co-Employees And Co-Volunteer Workers |
| C. Damage To Premises Rented To You <ul style="list-style-type: none"> • Perils of fire, explosion, lightning, smoke, water • Limit increased to \$300,000 | K. Aircraft Chartered With Crew |
| D. Blanket Waiver Of Subrogation | L. Non-Owned Watercraft – Increased From 25 Feet To 50 Feet |
| E. Blanket Additional Insured – Owners, Managers Or Lessors Of Premises | M. Increased Supplementary Payments <ul style="list-style-type: none"> • Cost of bail bonds increased to \$2,500 • Loss of earnings increased to \$500 per day |
| F. Blanket Additional Insured – Lessors Of Leased Equipment | N. Knowledge And Notice Of Occurrence Or Offense |
| G. Incidental Medical Malpractice | O. Unintentional Omission |
| H. Personal Injury – Assumed By Contract | P. Reasonable Force – Bodily Injury Or Property Damage |

PROVISIONS

A. BROADENED NAMED INSURED

1. The following is added to **SECTION II – WHO IS AN INSURED**:
Any organization, other than a partnership or joint venture, over which you maintain ownership or majority interest on the effective date of the policy qualifies as a Named Insured. However, coverage for any such organization will cease as of the date during the policy period that you no longer maintain ownership of, or majority interest in, such organization.
2. The following replaces Paragraph **4.a.** of **SECTION II – WHO IS AN INSURED**:

- a. 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, unless reported in writing to us within 180 days.

B. BLANKET ADDITIONAL INSURED – BROAD FORM VENDORS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a vendor and that you have agreed in a 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" or "property damage" that:

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COMMERCIAL GENERAL LIABILITY

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Arises out of "your products" which are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor is subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations of this Coverage Part, whichever are less.
- b. The insurance provided to such vendor does not apply to:
 - (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (2) Any express warranty unauthorized by you;
 - (3) Any physical or chemical change in "your products" made intentionally by such vendor;
 - (4) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (5) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";
 - (6) Demonstration, installation, servicing or repair operations, except such operations performed at such vendor's premises in connection with the sale of "your products"; or
 - (7) "Your products" which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or for such vendor.

Coverage under this provision does not apply to:

- a. Any person or organization from whom you have acquired "your products", or any ingredient, part or container entering into, accompanying or containing such products; or
- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

C. DAMAGE TO PREMISES RENTED TO YOU

1. The following replaces the last paragraph of Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Exclusions **c.** through **n.** do not apply to damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:

- a. Fire;
- b. Explosion;
- c. Lightning;
- d. Smoke resulting from such fire, explosion, or lightning; or
- e. Water.

A separate limit of insurance applies to such damage to premises as described in Paragraph 6. of Section III – Limits Of Insurance.

This insurance does not apply to damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:

- a. Rupture, bursting, or operation of pressure relief devices;
- b. Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water; or
- c. Explosion of steam boilers, steam pipes, steam engines, or steam turbines.

2. The following replaces Paragraph 6. of **SECTION III – LIMITS OF INSURANCE**:

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises while rented to you, or temporarily occupied by you with permission of the owner, caused by fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water. The Damage To Premises Rented To

Do not add this form to a policy. It is for informational purposes only.

You Limit will apply to all damage proximately caused by the same "occurrence", whether such damage results from fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; water; or any combination of any of these.

The Damage To Premises Rented To You Limit will be the higher of:

- a. \$300,000; or
- b. The amount shown on the Declarations of this Coverage Part for Damage To Premises Rented To You Limit.

3. The following replaces Paragraph a. of the definition of "insured contract" in the **DEFINITIONS** Section:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:

- (1) Fire;
- (2) Explosion;
- (3) Lightning;
- (4) Smoke resulting from such fire, explosion or lightning; or
- (5) Water.

is not an "insured contract";

4. The following replaces Paragraph 4.b.(1)(b) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- (b) That is insurance for premises rented to you, or temporarily occupied by you with the permission of the owner;

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**:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of premises owned or occupied by or rented or loaned to you; ongoing operations performed by you or on your behalf, done under a contract with that person or organization; "your work"; or "your products". We waive this right where you

have agreed to do so as part of a written contract, executed by you prior to loss.

E. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a premises owner, manager or lessor and that you have agreed in a written contract or agreement to name as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

- a. Is "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you have signed and executed that contract or agreement; and
- b. Arises out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor is subject to the following provisions:

- a. The limits of insurance provided to such premises owner, manager or lessor will be the limits which you agreed to provide in the written contract or agreement, or the limits shown on the Declarations of this Coverage Part, whichever are less.
- b. The insurance provided to such premises owner, manager or lessor does not apply to:
 - (1) "Bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
 - (2) Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.
- c. The insurance provided to such premises owner, manager or lessor is excess over any valid and collectible other insurance available to such premises owner, manager or lessor, unless you have agreed in a written contract for this insurance to apply on a primary or contributory basis.

Do not add this form to a policy. It is for informational purposes only.

COMMERCIAL GENERAL LIABILITY

F. BLANKET ADDITIONAL INSURED – LESSORS OF LEASED EQUIPMENT

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is an equipment lessor and that you have agreed in a 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", "personal injury" or "advertising injury" that:

- a. Is "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you have signed and executed that contract or agreement; and
- b. Is caused, in whole or in part, by your acts or omissions in the maintenance, operation or use by you of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor is subject to the following provisions:

- a. The limits of insurance provided to such equipment lessor will be the limits which you agreed to provide in the written contract or agreement, or the limits shown on the Declarations of this Coverage Part, whichever are less.
- b. The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.
- c. The insurance provided to such equipment lessor is excess over any valid and collectible other insurance available to such equipment lessor, unless you have agreed in a written contract for this insurance to apply on a primary or contributory basis.

G. INCIDENTAL MEDICAL MALPRACTICE

1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:

Unless you are in the business or occupation of providing professional health care services, "occurrence" also means an act or omission committed in providing or failing to provide "incidental medical services" to a person.

2. 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;
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances;
- c. First aid; or
- d. "Good Samaritan services".

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

3. The following is added to 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 any "bodily injury" arising out of any providing or failing to provide "incidental medical services" by any of your "employees", other than an employed doctor. Any such "employees" providing or failing to provide "incidental medical 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.

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 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 the providing or failing to provide "incidental medical services" to any one person will be considered one "occurrence".

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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**.

H. PERSONAL INJURY – ASSUMED BY CONTRACT

1. The following replaces Exclusion **e.**, **Contractual Liability**, in Paragraph **2.** of **SECTION I – COVERAGES – COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

e. Contractual Liability

"Personal injury" or "advertising injury" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to:

- (1) Liability for damages that the insured would have in the absence of the contract or agreement; or
- (2) Liability for damages because of "personal injury" assumed in a contract or agreement that is an "insured contract", provided that the "personal injury" is caused by an offense committed subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys fees and necessary litigation expenses incurred by or for a party other than an insured will be deemed to be damages because of "personal injury", provided that:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in

which damages to which this insurance applies are alleged.

2. The following replaces the third sentence of Paragraph **2.** of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**:

Notwithstanding the provisions of Paragraph **2.b.(2)** of Section **I – Coverage A – Bodily Injury And Property Damage Liability** or Paragraph **2.e.** of Section **I – Coverage B – Personal and Advertising Injury Liability**, such payments will not be deemed to be damages because of "bodily injury", "property damage" or "personal injury", and will not reduce the limits of insurance.

3. The following replaces Paragraph **2.d.** of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**:

d. The allegations in the "suit" and the information we know about the "occurrence" or offense are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

4. The following replaces the first subparagraph of Paragraph **f.** of the definition of "insured contract" in the **DEFINITIONS** Section:

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury," "property damage" or "personal injury" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

I. AMENDED BODILY INJURY DEFINITION

The following replaces the definition of "bodily injury" in the **DEFINITIONS** Section:

"Bodily injury" means bodily injury, mental anguish, mental injury, shock, fright, disability, humiliation, sickness or disease sustained by a person, including death resulting from any of these at any time.

J. BODILY INJURY TO CO-EMPLOYEES AND CO-VOLUNTEER WORKERS

The following is added to Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED**:

Paragraph **(1)(a)** above does not apply to "bodily injury" to a co-"employee" in the course of the co-

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COMMERCIAL GENERAL LIABILITY

"employee's" employment by you or performing duties related to the conduct of your business, or to "bodily injury" to your other "volunteer workers" while performing duties related to the conduct of your business.

K. AIRCRAFT CHARTERED WITH CREW

The following is added to Exclusion **g.**, **Aircraft, Auto Or Watercraft**, in Paragraph **2.** of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

This exclusion does not apply to an aircraft that is:

- (a) Chartered with crew to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

L. NON-OWNED WATERCRAFT

1. The following replaces Paragraph **(2)** of Exclusion **g.**, **Aircraft, Auto Or Watercraft**, in Paragraph **2.** of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

(2) A watercraft you do not own that is:

- (a) Fifty feet long or less; and
- (b) Not being used to carry any person or property for a charge.

2. The following is added to Paragraph **2.** of **SECTION II – WHO IS AN INSURED**:

Any person or organization that, with your express or implied consent, either uses or is responsible for the use of a watercraft that you do not own that is:

- (1) Fifty feet long or less; and
- (2) Not being used to carry any person or property for a charge.

M. INCREASED SUPPLEMENTARY PAYMENTS

1. The following replaces Paragraph **1.b.** of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES**:

b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. The following replaces Paragraph **1.d.** of **SUPPLEMENTARY PAYMENTS – COVER-**

AGES A AND B of **SECTION I – COVERAGES**:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

N. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE

The following is added to Paragraph **2.**, **Duties In The Event of Occurrence, Offense, Claim or Suit**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

e. The following provisions apply to Paragraph **a.** above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph **1.** or **2.** of Section **II – Who Is An Insured**:

(1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your trustees who is an individual (if you are a trust), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, limited liability company or trust) or any "employee" authorized by you to give notice of an "occurrence" or offense.

(2) If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:

- (a)** Any individual who is:
 - (i)** A partner or member of any partnership or joint venture;
 - (ii)** A manager of any limited liability company;
 - (iii)** A trustee of any trust; or
 - (iv)** An executive officer or director of any other organization;
 that is your partner, joint venture member, manager or trustee; or

Do not add this form to a policy. It is for informational purposes only.

(b) Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

(3) Notice to us of such "occurrence" or offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e.(1) or (2) above discovers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this policy includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph e. does not affect that requirement.

O. UNINTENTIONAL OMISSION

The following is added to Paragraph 6., **Representations**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

P. REASONABLE FORCE – BODILY INJURY OR PROPERTY DAMAGE

The following replaces Exclusion a., **Expected Or Intended Injury**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

a. Expected or Intended Injury or Damage

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect any person or property.

Do not add this form to a policy. It is for informational purposes only.

POLICY NUMBER: BA-0L074510-18-14-G

COMMERCIAL AUTO
ISSUE DATE: 07-30-18**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****LESSOR – ADDITIONAL INSURED AND LOSS PAYEE**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

SCHEDULE**Insurance Company:** THE TRAVELERS INDEMNITY COMPANY OF AMERICA**Policy Number:** BA-0L074510-18-14-G**Effective Date:** 06-30-18**Expiration Date:** 06-30-19**Named Insured:** GREENBACKER RENEWABLE ENERGY
AND AS PER IL T8 00**Address:** 11 E 44TH ST
STE 1200
NEW YORK NY 10017**Additional Insured (Lessor):****Address:****Designation Or Description Of "Leased Autos":**

ANY AUTO LEASED FOR A PERIOD OF SIX MONTHS OR MORE UNDER A LEASING CONTRACT OR AGREEMENT THAT REQUIRES YOU TO PROVIDE DIRECT PRIMARY INSURANCE FOR THE LESSOR.

Coverages	Limit Of Insurance
Covered Autos Liability	\$ 1,000,000 Each "Accident"
Comprehensive	Actual Cash Value Or Cost Of Repair, Whichever Is Less, Minus \$ See CA T0 02 Deductible For Each Covered "Leased Auto"
Collision	Actual Cash Value Or Cost Of Repair, Whichever Is Less, Minus \$ See CA T0 02 Deductible For Each Covered "Leased Auto"
Specified Causes Of Loss	Actual Cash Value Or Cost Of Repair, Whichever Is Less, Minus \$ Deductible For Each Covered "Leased Auto"

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

COMMERCIAL AUTO

A. Coverage

1. Any "leased auto" designated or described in the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire or borrow.
2. For a "leased auto" designated or described in the Schedule, the **Who Is An Insured** provision under **Covered Autos Liability Coverage** is changed to include as an "insured" the lessor named in the Schedule. However, the lessor is an "insured" only for "bodily injury" or "property damage" resulting from the acts or omissions by:
 - a. You;
 - b. Any of your "employees" or agents; or
 - c. Any person, except the lessor or any "employee" or agent of the lessor, operating a "leased auto" with the permission of any of the above.
3. The coverages provided under this endorsement apply to any "leased auto" described in the Schedule until the expiration date shown in the Schedule, or when the lessor or his or her agent takes possession of the "leased auto", whichever occurs first.

B. Loss Payable Clause

1. We will pay, as interest may appear, you and the lessor named in this endorsement for "loss" to a "leased auto".

2. The insurance covers the interest of the lessor unless the "loss" results from fraudulent acts or omissions on your part.
3. If we make any payment to the lessor, we will obtain his or her rights against any other party.

C. Cancellation

1. If we cancel the policy, we will mail notice to the lessor in accordance with the Cancellation Common Policy Condition.
2. If you cancel the policy, we will mail notice to the lessor.
3. Cancellation ends this agreement.

- D. The lessor is not liable for payment of your premiums.

E. Additional Definition

As used in this endorsement:

"Leased auto" means an "auto" leased or rented to you, including any substitute, replacement or extra "auto" needed to meet seasonal or other needs, under a leasing or rental agreement that requires you to provide direct primary insurance for the lessor.

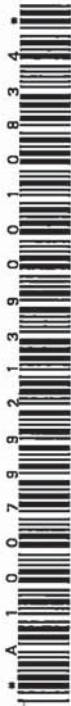


Exhibit G – Producer Agreement



Solar Garden ID No. _____

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

This Agreement is made and entered into this ___ day of _____, 20___, 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 _____ (“SRC Producer”), a _____, whose business address is _____, 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 1.18 below) and the PV System Owner (as defined in Section 1.12 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 (DC) nameplate capacity of ___ kW.

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. “Commission” shall mean the Public Utilities Commission of the State of Colorado.

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

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

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

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

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

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

1.8 “Low-Income Customer” shall mean, consistent with Section 40-3-106, C.R.S., that a customer be at or below 185% of the Federal Poverty Line.

1.9 “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 4.6 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.

1.10 “Photovoltaic Energy” shall mean the net electric energy generated from the PV System, using solar radiation energy to generate electricity, including any and all associated RECs, 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.

1.11 “Production Meter” shall mean the measuring facility installed by Public Service pursuant to Section 5.1 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy changes possession from SRC Producer to Public Service.

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

1.13 “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 subject to this Agreement.

1.14 “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. If the PV System Owner is the same entity as SRC Producer, then Section 3.2 hereof shall not be applicable.

1.15 “Renewable Energy Credit” or “REC” shall have the meaning set forth in 4 CCR 723-3-3652(t). 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 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.

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

1.17 “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.

1.18 “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 \$300 for each user that logs into to the SRC Application and Subscriber Management System. This number is subject to change in the 2017 and future contract cycle 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.

1.19 “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 4.6 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.

1.20 “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 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.

1.21 “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.

1.22 “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.

1.23 “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.

1.24 “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. 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 produced by the PV System and attributable to Subscriptions held by all SRC Subscribers in the PV System.

(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 produced by the PV System shall be the full responsibility of the SRC Producer.

2.2 Delivery of RECs Associated with Photovoltaic Energy. Effective upon the Date of Commercial Operation, all of the RECs attributable to all Photovoltaic Energy produced by the PV System attributable to Subscriptions held by all SRC Subscribers, based upon the Monthly Subscription Information applicable to each Production Month, shall be delivered to Public Service at the Production Meter.

2.3 Positive REC Price and REC Payments to SRC Producer. The price to be paid by Public Service for the purchase of such 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. Public Service shall pay SRC Producer the price of _____ per MWh for RECs purchased. Payments for such purchases shall be made monthly by check to SRC Producer for the RECs associated with the subscribed portion of Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such REC payment shall be made within thirty (30) days of the applicable meter reading.

2.4 Negative REC Price and Option for One-Time REC Payment to Public Service. If the REC price is negative Public Service and the SRC Producer may agree that the SRC Producer may make a one-time payment to Public Service of \$_____. Such payment shall be made by check to Public Service issued within thirty (30) days after the Date of Commercial Operation.

2.5 Negative REC Price and Payment(s) to Public Service. The amount to be paid by SRC Producer to Public Service shall be expressed in dollars per megawatt-hour (MWh), SRC Producer shall pay Public Service the price of _____ per MWh of energy generated by the PV system for the subscribed portion of Photovoltaic Energy recorded at the Production Meter. Payments shall be made by check to Public Service by SRC Producer. Such payments 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. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public Service agrees to purchase all of the Photovoltaic Energy 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 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 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.

2.7 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 warrants and represents to Public Service that it has or will have at the time of delivery good and sufficient title to all Photovoltaic Energy output and/or the ability to transfer good and sufficient title of same to Public Service. SRC Producer warrants and represents to Public Service that it has or will have at the time of delivery good and sufficient title to all RECs associated with such Photovoltaic Energy output and/or the ability to transfer good and sufficient title of all such RECs to Public Service.

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 represents and warrants as follows:

(a) SRC Producer is either the PV System Owner or is a subscriber organization organized under Section 40-2-127, C.R.S., and has been 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 has been duly authorized to sell and deliver to Public Service Photovoltaic Energy produced by the PV System on behalf of all SRC Subscribers having valid Subscriptions in the PV System, the purchase price and full consideration for which are the SRC Credits to be applied on the SRC Subscribers' electric service bills in accordance with Rate Schedule SRC of Public Service's Electric Tariffs.

(c) SRC Producer has the right and authority to sell the unsubscribed Photovoltaic Energy produced by the PV System to Public Service on behalf of the PV System Owner, the SRC Subscribers and itself.

(d) SRC Producer has the right and authority to sell all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter.

3.2 If the PV System Owner and the SRC Producer are not the same person, then the undersigned PV System Owner hereby agrees and consents to the terms of this Agreement and hereby authorizes SRC Producer 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. The conditions set forth in the following subparagraphs (a) through (f) of this Section 3.3 must be satisfied at all times during the Term of this Agreement, except as specifically provided otherwise below. 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 such conditions. For purposes of this Agreement, the SRC Allocation for any SRC Subscriber or Subscription that no longer satisfies the below conditions for qualification as a valid SRC Subscriber or Subscription shall be treated as an unsubscribed portion, and the Monthly Subscription Information automatically changed accordingly, unless and until such SRC Allocation is changed by SRC Producer in a manner that satisfies all such conditions.

(a) No SRC Subscriber may own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or 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) Unless the SRC Subscriber is 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, each Subscription shall be 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. The minimum one kW sizing requirement herein shall 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 shall be a premise served by Public Service and shall 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) At least __ percent of the Subscriptions reflected in the SRC Allocation must be attributable to one or more SRC Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(o) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652. If, at any time, the level of subscription falls below this level the SRC Producer will only be entitled to payment at the unsubscribed energy rate. Any attempt to subscribe a SRC subscriber who does not meet the referenced low-income requirements will be denied.

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

3.4 Requirements and Restrictions Applicable to the PV System. The conditions set forth in the following subparagraphs (a) through (c) of this Section 3.4 must be satisfied at all times during the Term of this Agreement. Public Service shall have the right hereunder to refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during the period it is not in compliance with any of such conditions.

(a) The PV System shall have at least ten SRC Subscribers.

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

(c) The PV System shall 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, as the result of the official and valid action of any governmental body, the PV System is no longer located within Public Service's existing service territory, then Public Service shall also have the right to terminate this Agreement effective on or after the date the PV System is no longer located within Public Service's existing service territory, by providing ten (10) days advance written notice to SRC Producer.

(d) The location of CSGs may 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 CSG 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 shall be registered with the Western Renewable Energy Generation Information System ("WREGIS") and its production data regularly reported to the WREGIS.

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 responsible for ensuring 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 False Representation. Any representation or warranty made by SRC Producer in this Agreement that shall prove to have been false or misleading in any material respect when made, or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Company, shall constitute an event of default subject to Section 7.1 hereof.

3.8 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, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for final billings and adjustments related to the period prior to termination, 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 Commercial Operation Date, SRC Producer agrees to (i) submit semi-annual progress reports to Company including current status of each Construction Milestone, any significant developments or delays along with an action plan for making up delays, and SRC Producer's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility 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 Facility at the Facility for compliance with this agreement, *provided, however, that* Company shall comply with all of SRC Producer's 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 Production Meter has been installed; 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 sixty (60) days of the Date of Commercial Operation, Public Service shall return to SRC Producer the amount paid to Public Service as a required deposit in connection with its application for the PV System under Public Service's Solar*Rewards Community Program. If Commercial Operation is not achieved within 18 months of the date the application is created by Public Service, such deposit shall become non-refundable and forfeited by SRC Producer.

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 3665(d)(IV)(A) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3665, 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 or destroyed, 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 or 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 the estimated annual generation of the PV System, as determined via PVWATTS, multiplied by the number of years remaining in the Term as of the effective date of such termination, plus a prorated amount of the REC payment.

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 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 low-income subscriber 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. In the event Public Service discovers through a credible source that 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. In the event Public Service discovers through a credible source that 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. Once Commercial Operation has been obtained, 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 Semi-annual Progress Reports. The semi-annual progress reports are due on every 6 month interval determined from the date the application is created by Public Service. Progress reports are no longer required once the garden has obtained commercial operation.

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 18 months to bring the PV System to commercial operation. If the PV System has not achieved this status within 18 months, the deposit associated with the PV System will be forfeited to the Renewable Energy Standard Account. If, after 24 months the PV System has not been brought to commercial operation, the SRC Producer will be fined at a rate of \$1,000 per day beginning with the first day of the 25th month and continuing until the final day of the 30th month. Any fines accrued during this time period must be paid in advance of the setting of any meter by Public Service. If, the PV System has not been brought into commercial operation after 30 months, Public Service will consider the PV System incomplete and remove it from the program with any associated capacity forfeited and any outstanding fines or other costs due immediately to Public Service from the SRC Producer.

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 5.2 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 SRC Producer and Public Service will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rule 3667 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3667, and Public Service's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation," dated March 26, 2010, 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, nothing in the Interconnection Agreement 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 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 5.5. 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 or 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 Customer 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:

(A) PV System Owner, SRC Producer and their affiliated and parent companies failure at any time during the Term of this Agreement to meet the requirements under Section 5.1. In such event Company may, after sixty (60) calendar days notice and in its sole discretion, terminate this Agreement. Upon such termination Company shall have no further financial or other obligation to the SRC Producer as a result of such termination. The provisions of paragraph 7.3 shall not apply to an event of default under this paragraph.

(B) The failure by either Party to perform or observe any other material term or provision of this Agreement, that is not excused by Force Majeure, and such failure remains unremedied for 30 Days after notice thereof shall have been given by the non-defaulting Party.

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 a 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.

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 taxable consequences, if any, to SRC Producer with respect to the production and sale of Photovoltaic Energy or RECs, and SRC Producer is urged to seek professional advice regarding this issue.

8.2 Indemnification by SRC Producer. SRC Producer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature 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.

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.

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 these premises 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 hereto (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.

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 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. 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, acceptable to Company, to assignment to any of SRC Producer's 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:

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, constitutes the entire understanding and agreement between the Parties with respect to the purchase of RECs from SRC Producer, 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 WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date and year first above written.

SRC Producer

SRC Producer Name (printed): Oak Leaf Solar XXIV LLC

SRC Producer Representative: Michael McCabe

Title: President

SRC Producer Signature: [Signature] **Date:** April 24, 2017

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

By: _____ **Date:** _____
Title: _____

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

PV System Owner (if different from SRC Producer)

PV System Owner Name (printed): _____

PV System Owner Representative: _____

Title: _____

PV System Owner Signature: _____ **Date:** _____

Solar Garden ID No. _____

Exhibit A
to
Solar*Rewards Community Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

Exhibit B
to
Solar*Rewards Community 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.

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 (b) 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: _____
Title: _____

By: _____
Title: _____

Date: _____

Date: _____

Exhibit C
to
Construction Milestones

DATE	RESULTS ACHIEVED
1	SRC Producer shall have 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 shall have received site acquisition/control.
4	Site Survey and soils report
5	SRC Producer shall have obtained all variance allowances and planning approval.
6	SRC Producer shall have obtained all required permits.
7	SRC Producer shall have achieved closing on financing for the CSG facility or have provided Public Service with proof of financial capability to construct the project
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 Facility.
9	SRC Producer and all required counterparties have executed the Interconnection Agreement.
10	The SRC Producer shall have started garden construction.
11	SRC Producer shall provide Public Service with copies of applicable inspection reports for the project.
12	SRC Producer shall provide Public Service with evidence of complying with that insurance coverage required prior to the Date of Commercial Operation.
13	SRC Producer shall have made the Interconnection of the CSG generating facility and is capable of being energized.
14	Commercial Operation has been achieved and the date duly recorded.
15	All other requisite SRC application documentation is on file.
16	SRC Producer shall have completed the project within 18 months of receiving an award.

