



Community Solar Services Agreement[®]

Denver Community Solar Garden II LLC: Denver Community Solar Garden II LLC 211 Carnegie Center Princeton, New Jersey 08540	Customer Name: City and County of Denver Address for Invoices: <u>201 West Colfax Ave. Dept. 1106</u> <u>Denver, CO 80202</u>
---	--

DESCRIPTION OF THE COMMUNITY SOLAR GARDEN

Name: Denver II

Location: 48th and Tower Road

County: Denver

Initial nameplate capacity rating: 499.4 kW

CUSTOMER'S SERVICE LOCATION(S) WITH XCEL ENERGY

1. **Service Address:**

Street City County

2. Xcel Account Number: _____ 3. Production Capacity: _____ kilowatts

4. Additional Locations are listed below. Yes X No _____ (See attachment E)

CUSTOMER'S PRODUCTION CAPACITY

Total Production Capacity: 199.75 kilowatts DC (Approximately 440,308 kilowatt hours/year)

Additional Capacity Election: If available, Customer elects to purchase up to an additional:
 _____ kilowatts DC (Approximately _____ kilowatt hours/year) (See Attachment F)

Check those that apply:

X Monthly Rate (listed in Attachment C). Subject to a 2.9% increase as listed in Attachment C.

_____ Down payment \$ _____

_____ Full prepayment of \$ _____, for an average kWh price of _____ cents/kWh

Reimbursement Rate for Underperformance: _____ cents per kWh (applicable only to Full Prepayments)

1. **Parties.** This is a Community Solar Services Agreement between Denver Community Solar Garden II LLC (“Denver II”) and you, a retail electric service customer of Xcel Energy. For convenience, references to Denver II include the words “Solar Services Provider”, “we” and “us.” References to the City and County of Denver include the words “you”, “the City”, or “Customer”. References to this Community Solar Services Agreement include the words “this Agreement.” The Solar Services Provider shall fully coordinate all services under the Agreement with the Executive Director of General Services, (“Executive Director”) or, the Executive Director’s Designee.
2. **The Community Solar Garden.** Denver II will construct, own, operate, and maintain a Community Solar Garden (“Solar Garden”) in the City and County of Denver, Colorado. You are the electricity customer of record at one or more premises located in this county served by Xcel Energy. Colorado law allows you to own a share of the solar energy produced from the Solar Garden and attribute your share of solar energy to one or more of your metered premises. We refer to the premises covered by this Agreement as your “Location” or “Locations.” (See, C.R.S. §40-2-127, *et seq.*, and Rule 3665, 4 CCR 723-3.)
3. **Customer’s Production Capacity.** You are eligible to participate in Denver II ’s Solar Garden and are attributed to own the amount of production shown in kilowatts (“kW”) on the cover page, which we refer to as your “Production Capacity” in this Agreement. Notwithstanding the “ownership” of the Production, the City is not liable for any damage caused by the creation, distribution, or use of the Production. We measure the amount of solar energy produced by your Production Capacity in kilowatt hours (“kWh”), and refer to that energy in this Agreement as your “Solar Energy.” Our obligations to each other are set out in this Agreement. Denver II also has obligations under the related agreements described in Paragraph 4 below.
4. **Solar*Rewards Community Agreement.** Denver II will enter into a Solar*Rewards Community Agreement, included as Attachment B, with Xcel Energy under which Denver II and Xcel Energy take the following actions in the implementation of the solar garden program:
 - A. **Denver II’s Responsibilities.** Denver II 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 (“RECs”) to Xcel Energy; for providing Xcel Energy with monthly information that identifies you, your Production Capacity, and your Solar Energy; and for sending you a monthly invoice for your Solar Energy payable directly to Denver II .
 - B. **Xcel Energy’s Responsibilities.** Xcel Energy is responsible for accepting deliveries of your Solar Energy; for providing you with a credit in dollars for your Solar Energy on your retail electric service bill (your “Bill Credit”); and for issuing a check to Denver II for the RECs associated with your Solar Energy.
5. **Bill Calculation Acknowledgement and Solar*Rewards Community Agreement.** When you sign this Agreement, you agree to the Acknowledgement of Bill Credit Calculation included as Attachment A and the Solar*Rewards Community Agreement included as Attachment B (“ SRC Agreement”). The SRC Agreement gives us the authority to act on your behalf to sell your Solar Energy and RECs to Xcel Energy, and to communicate information to Xcel Energy used to calculate and apply your Bill Credit.
6. **Consent to Disclose Utility Customer Data.** When you sign this Agreement, you agree to sign a “Consent to Disclose Utility Customer Data”, included as Attachment H, that authorizes Xcel Energy to share information with us about your past and present electric usage at your Locations and will be used verify the extent of your eligibility to participate in the Solar Garden.
7. **Effective Date; Term.**
 - A. **Effective Date:** This Agreement is effective upon execution and will terminate after Xcel Energy applies the Bill Credit for the 240th month of production of Solar Energy to your electric account. This Agreement shall automatically terminate if the Solar Garden has not reached commercial operation by September 1, 2015. Commercial Operation as used in this Agreement is defined as the first day of the first month following the initial production of kWh by the Solar Garden.
 - B. **Initial Term.** The Agreement will commence on June 1, 2015 and will expire on December 31, 2015 (the “Initial Term.”)
 - C. **Renewal Terms.** The City shall automatically renew the Initial Term for twenty (20) additional one-year terms by appropriation of sufficient amounts for the subsequent year by City Council. The first Renewal Term shall be from January 1, 2016 to December 31, 2016; the second Renewal Term shall be from January 1, 2017 to December 31, 2017; the third Renewal Term shall be from January 1, 2018 to December 31, 2018; the fourth Renewal Term shall be from January 1, 2019 to December 31, 2019; the fifth Renewal Term shall be from January 1, 2020 to December 31, 2020; the sixth Renewal Term shall be from January 1, 2021 to December 31, 2021; the seventh Renewal Term shall be from January 1, 2022 to December 31, 2022; the eighth Renewal Term shall be from January 1, 2023 to December 31, 2023; and the ninth Renewal Term shall be from January

1, 2024 to December 31, 2024; and the tenth Renewal Term shall be from January 1, 2025 to December 31, 2025; and the eleventh Renewal Term shall be from January 1, 2026 to December 31, 2026; and the twelfth Renewal Term shall be from January 1, 2027 to December 31, 2027; and the thirteenth Renewal Term shall be from January 1, 2028 to December 31, 2028; and the fourteenth Renewal Term shall be from January 1, 2029 to December 31, 2029; and the fifteenth Renewal Term shall be from January 1, 2030 to December 31, 2030; and the sixteenth Renewal Term shall be from January 1, 2031 to December 31, 2031; and the seventeenth Renewal Term shall be from January 1, 2032 to December 31, 2032; and the eighteenth Renewal Term shall be from January 1, 2033 to December 31, 2033; and the nineteenth Renewal Term shall be from January 1, 2034 to December 31, 2034; and the twentieth Renewal Term shall be from January 1, 2035 to the earlier of Xcel Energy's application of the Bill Credit for the 240th month of production of Solar Energy to your electric account or December 31, 2035 (each an "Annual Renewal").

8. **Payments.** Unless otherwise set forth in this Agreement and subject to appropriation, the payment amount you owe Denver II ("**Monthly Payment**") is equal to the kWh of Solar Energy produced and delivered to Xcel Energy during a production month, multiplied by the price per kWh in effect during the year in which the production month occurs shown on the price list on Attachment C. Denver II shall deliver to Purchaser monthly invoices, no later than thirty (30) days after the last day of the month in which the charges were incurred, stating the kWh delivered to Purchaser during the preceding calendar month and calculating the purchase price therefore. The Solar Service Provider's invoice shall be in form satisfactory to the City and shall provide an address for payment. The Solar Services Provider agrees that the Executive Director of General Services ("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 Solar Services Provider.

The City shall process all invoices for payment received from the Solar Services 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 Solar Services 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.

If Xcel Energy has not accepted all or part of your Solar Energy or has not provided you with a Bill Credit for all or part of your Solar Energy on your retail electric service bill, you agree to pay the undisputed portion when due and provide us with notice of the invoice discrepancy. You will not be responsible for the Monthly Payment for the Bill Credits in question until Xcel has provided them to you. The amount of your Monthly Payment assumes payment through electronic funds transfer.

9. **Maximum Contract Payment Obligation.** Any other provision of this Agreement notwithstanding, in no event shall the City's payment obligation for the services provided hereunder, assuming all Renewal Terms are accepted, be any amount in excess of the sum of One Million Three Hundred Thirty Four Thousand Two Hundred Seventy Six Dollars (\$1,334,276.00) ("the Maximum Contract Amount") over the term of this Agreement, unless this Agreement is amended to increase such amount.
10. **Contract Funding.** The City has made an appropriation for the initial term of Fifty Two Thousand Eight Hundred Thirty Seven Dollars (\$52,837.00) but is under no obligation to make any future encumbrances or appropriations for Renewal Terms under this Agreement nor is the City under any obligation to amend this Agreement to increase the Maximum Contract Amount stated above.

Unless we choose to terminate this Agreement for a Non-Appropriation Event, your staff will continue to include the amounts to become due in each subsequent fiscal year of the Term in your budget request for funding of your energy costs for each fiscal year, and if an appropriation for funds is made for a future fiscal year, our respective obligations under this Agreement will be reinstated. In that event, you will not be liable for any past annual appropriation amount that was not appropriated. If you make ten (10) successive annual requests to appropriate funds for electricity purchases at your Location that are denied, you will no longer be required to make further annual appropriation requests under this Agreement. We may transfer all of your Production Capacity to another customer for the duration of a Non-Appropriation Event.

It is expressly understood and agreed that the obligation of the City to make payments to the Solar Services Provider shall only extend to monies appropriated by the Denver City Council, paid into the Treasury of the City and encumbered for the purposes of this Agreement. The Solar Services Provider acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

11. **Disputed Invoice.** 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 Section 56-106(b), *et seq.*, Revised Municipal Code of the City and County of Denver. The Parties hereto agree that the Executive Director of General Services' determination resulting from said administrative hearing shall be final, subject only to the Solar Services Provider's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

- 12. Customer Eligibility.** You agree that the following statements that establish your eligibility to purchase a share of the Solar Garden are true and complete in all respects, and you agree to notify us immediately if any of these statements ceases to be true:
- A. Your Locations on Attachment E are within Xcel Energy's service territory and are in the same county in which the Solar Garden is located.
 - B. The Xcel Energy service account number for each Location is accurate as stated in Attachment E of this Agreement and the name of the customer of record is identical to your name as stated on the cover page.
 - C. The generation of electricity for wholesale or retail sale is not the primary business at any of your Locations on Attachment E.
 - D. Neither your Production Capacity nor the RECs associated with your Production Capacity at the Locations on Attachment E are more than forty percent (40%) of the nameplate capacity of the Solar Garden.
 - E. Your Solar Energy will supply not more than one hundred twenty percent (120%) of your average annual electricity consumption at your Locations on Attachment E, reduced by any existing on-site renewable generation facilities at those Locations.
- 13. Bill Credits.** Xcel Energy is responsible for accepting deliveries of your Solar Energy; and for providing you with a Bill Credit in dollars for your Solar Energy on your retail electric service bill. The amount of your Bill Credit is based on various factors controlled by your Franchise Agreement with Xcel Energy with an effective date of January 1, 2007, your use of energy, and rates as regulated by the Colorado Public Utilities Commission ("PUC"). A change in rates under the solar gardens program may increase or decrease the amount of bill credits for each ratepayer class, a dynamic that is explained in further detail in Attachment A. You agree that your obligation for the Monthly Payment is independent of the amount of your Bill Credit.
- 14. Renewable Energy Credits.** The Solar*Rewards Community Agreement, attached as Attachment G requires us to sell your Solar Energy to Xcel Energy in exchange for your Bill Credit and to sell your RECs in exchange for a payment to us so Xcel Energy can comply with their renewable energy requirements under Colorado Law. The City irrevocably assigns and transfers to Denver II the right to receive and retain the REC payments from Xcel Energy attributable to your Solar Energy. You agree that if you transfer your Production Capacity to another person your transferred interest in your Production Capacity will not act as the City's rescission of the assignment of the RECs to Denver II and, except as may otherwise be provided by operation of law, will not affect Denver II's ongoing right to receive payments from Xcel Energy for the RECs associated with the Solar Energy and transferred Production Capacity. There may be additional, non-power related benefits associated with your Production Capacity, such as environmental, tax, or future benefits. In the event such future benefits arise, this Agreement shall be amended to address the allocation of those benefits.
- 15. Changes in Your Participation.** Should your participation in the Solar Garden remain unchanged over the Term of this Agreement, the only action required of you is that you pay as set forth in this Agreement, subject to appropriation, and let us know if there are any changes in your eligibility status. The following provisions apply if you want to change your participation by transferring your Production Capacity to another customer, substituting new premises of yours for a Location covered by this Agreement, or increasing the amount of your Production Capacity.
- A. **Transfer of Production Capacity to Another Entity.** You may transfer or assign all or part of your Production Capacity to any person or entity who takes possession of any Location identified in Attachment E and qualifies to be a purchaser of energy created by the Solar Garden by sending us a written request in which you identify:
 - i. The Location(s) associated with the Production Capacity you want to transfer and the amount of Production Capacity to be transferred;
 - ii. The name of the Xcel Energy customer of record, the account number, and the physical address, including county, associated with each premise that will be covered under this Agreement after the proposed transfer, and the amount of Production Capacity attributed to each meter for the purpose of applying Bill Credits; and

iii. If the proposed transfer meets the Customer Eligibility requirements, including our credit requirements, we will provide you with the following documents which you and your proposed transferee will need to fully complete, execute, and return to us before we can approve the proposed transfer:

- a) An Assignment of your designated interest in your Production Capacity and Solar Energy under this Agreement to the proposed transferee, signed by you and the proposed transferee;
- b) A Solar*Rewards Community Agency Agreement, completed and signed by the proposed transferee; and
- c) A Consent to Disclose Utility Customer Data signed by the proposed transferee.

If you desire to transfer or assign your Production Capacity in the Solar Garden and have not identified a transferee, we will offer all or a portion of your Production Capacity to an eligible transferee pursuant to Section 16.

B. Substitution of New Premises. You may substitute new premises of yours for any Location covered by this Agreement not more often than once every twelve (12) months by providing us with a request in writing in which you identify:

- i. The Location and the Production Capacity attributable to the Location that you want to transfer;
- ii. The account number, and the physical address, including county, associated with the new premises that will be covered under this Agreement after the proposed substitution, and the Production Capacity attributed to each meter for the purpose of applying Bill Credits; and
- iii. If the proposed transfer meets our Customer Eligibility requirements, we will provide you with the following documents which you will need to fully complete, execute, and return to us before we can approve the proposed substitution of Locations:
 - a) Amendment to this Agreement that reflects the requested substitution of Locations;
 - b) An updated Solar*Rewards Community Agency Agreement, if required, completed and signed by you; and
 - c) A new Consent to Disclose Utility Customer Data, if required, signed by you.

If you desire to substitute new premises of yours for any Location covered by this Agreement and have not identified a Location that meets our Customer Eligibility requirements, we will offer all or a portion of your Production Capacity to an eligible transferee pursuant to Section 16.

C. Processing Changes. Transfers of your Production Capacity or substituting Locations may take up to ninety (90) days to complete, depending on the accuracy of the information we receive and the timely completion and return by you of the documents we require. You agree to pay the Monthly Payment until you have fully complied with the process and we approve your proposed transfer or location substitution.

D. Additional Capacity Election and Oversubscription. ~~You may elect to purchase additional production capacity from the Solar Garden, or another Community Solar Garden, if more capacity becomes available ("Additional Capacity") at the rate of \$ _____ cents per kWh, increasing at a rate of _____% per year, so long as the purchase will not cause the Maximum Contract Amount to be exceeded. The amount of your request for Additional Capacity, if any, is shown on the cover page of this Agreement, and the meters to be served by such Additional Capacity are identified in Attachment F hereto. Additionally, in the event that total subscriptions exceed the production capacity of the Solar Garden, or if we are otherwise commercially or physically unable to meet the Production Capacity set forth in this Agreement (all such circumstances, an "Oversubscription") (the Additional Capacity and Oversubscription, together, the "Deferred Capacity"), we may, at our discretion, defer in whole or in part your Oversubscription to a future Denver II Community Solar Garden project, if and when capacity from such a project becomes available.~~

~~The specific terms of the acquisition of all such Deferred Capacity shall be subject to that certain Oversubscription Election between the Parties, dated concurrently herewith (the "Oversubscription Election"). All such Deferred Capacity shall be placed on a subscription waiting list and carried over for participation in a future Community Solar Garden project for which you would be an eligible participant as further specified in the Oversubscription Election. In the event Denver II develops a future Community Solar Garden project for which you are an eligible participant, we shall use commercially reasonable efforts to provide you with a preference over any new eligible Customers to have your Deferred Capacity provided by that future Community Solar Garden project. [Parties intentionally deleted.]~~

16. Wait List. If the Solar Garden is fully subscribed, we will maintain a wait list of eligible customers of Xcel Energy who desire to participate in the Solar Garden. If you desire to transfer or assign your Production Capacity in the Solar Garden and have not identified a transferee, we will offer all or a portion of your Production Capacity on a first-come, first-serve basis to customers on the waiting list on the same terms as are in this Agreement covering your Production Capacity.

If you terminate your service from Xcel Energy or desire to transfer your interest in Production Capacity during the Term of this Agreement, have not identified an eligible transferee, and there are no customers on our wait list who, individually or in aggregate, agree to subscribe to your Production Capacity you will continue to be responsible for the Monthly Payment under this Agreement, subject to appropriation. You agree to assign your interest in your Production Capacity, the Bill Credits and the RECs to us upon termination of this Agreement.

17. Taxes. The Monthly Payment does not include taxes. The term “taxes” includes any federal, state, and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, or transaction tax, and other taxes, regulatory fees, surcharges, or other similar charges, but does not include any income taxes imposed on Denver II’s revenues due to the sale of energy under this Agreement, which are solely Denver II’s responsibility. 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 D.R.M.C. § 20-107, *et seq.* The Solar Services Provider shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property, including to land, facilities, improvements, or equipment belong to the City.

18. Non-Appropriation Event. Denver II acknowledges and agrees that in accordance with Colorado constitutional restrictions, Customer has appropriated funds necessary to satisfy the payments that are required to fulfill its obligations under this Agreement for the initial year of the term of this Agreement. The payment of any compensation due under this Agreement for any year beyond the first year provided for herein is contingent upon annual appropriation of funds in accordance with applicable law. During the Term of this Agreement, you agree that your staff will in good faith include the amounts to become due under this Agreement in your budget request for each fiscal year for funding your energy costs. In any fiscal year, your failure to appropriate for the purchase of electricity from Denver II pursuant to this Agreement, will be a non-appropriation event (a “Non-Appropriation Event”). If a Non-Appropriation Event occurs, you shall have sixty (60) days after receipt of notice from us to either cure the non-appropriation or to assign your Production Capacity to us. We will have the right to retain your Production Capacity, and the Bill Credits and RECs associated with your Production Capacity, for the duration of the Non-Appropriation Event. You will not have the right to receive Bill Credits during the occurrence of a Non-Appropriation Event.

19. Termination.

A. Denver II’s Right to Terminate. If a Non-Appropriation Event occurs, Denver II has the right in our sole discretion to terminate this Agreement, without further obligation by either party. You agree to assign your interest in your Production Capacity to us upon termination of this Agreement.

B. City’s Right to Terminate. The City has the right to terminate the Agreement if any of Denver II’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, kick backs, 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 immediately upon receipt of written notice. However, nothing herein shall be construed as giving Denver II the right to charge for power under the Agreement beyond the time when the written termination notice is sent to Denver II.

20. Insurance. We will insure the Solar Garden during the term of this Agreement in accordance with our contract with Xcel Energy and applicable law, regulations, and tariffs; including personal property insurance, general liability and we will require Denver II employees to maintain personal automobile insurance. You are not responsible for insuring your Production Capacity from the Solar Garden.

21. Customer Default. The following events will constitute an event of default on your part (a “Customer Default”):

A. Except as otherwise expressly permitted in this Agreement, you terminate this Agreement before the end of the Term; Non-appropriation is not an event of default.

- B. You fail to pay any appropriated amount when due under this Agreement and such failure continues for thirty (30) days after such amount is due;
- C. You are in breach of any representation, or fail to perform any material obligation as set forth in this Agreement and your breach or failure is not cured within thirty (30) days after you receive notice from us;
- D. You admit in writing your insolvency, assign your assets for the benefit of creditors, enter any bankruptcy or reorganization proceeding (either voluntary or involuntary), are otherwise adjudicated bankrupt or insolvent, or have all or substantially all of your assets subject to attachment, execution or other judicial seizure; or any similar event occurs; or
- E. You attempt to claim any RECs or non-energy related benefits in connection with Solar Energy that conflict with the terms of this Agreement.
- F. You or any of your 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, kick backs, 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.

22. Denver II Default. The following events will constitute a Denver II Default:

- A. We are in breach of any representation or warranty, or fail to perform any material obligation as set forth in this Agreement and our breach or failure is not cured within thirty (30) days after notice from you; or
- B. We admit in writing our insolvency, assign our assets for the benefit of creditors, enter any bankruptcy or reorganization proceeding (either voluntary or involuntary), are otherwise adjudicated bankrupt or insolvent, have all or substantially all of our assets subject to attachment, execution or other judicial seizure; or any similar event occurs.

23. Our Remedies in Case of Your Default. If you are in default under this Agreement, we may take any one or more of the following actions at our option and in our discretion. If the law requires us to do so, we will give you notice and wait the stipulated period of time required before taking these actions. We may:

- A. Cancel this Agreement;
- B. Take any reasonable action to correct or cover your default and to prevent or reduce our loss;
- C. Proceed, by appropriate court or other action, to transfer your interest to another purchaser and recover damages to cover your default.

24. Your Remedies in Case of Our Default. If we are in default and our default results in the failure or inability of the Solar Garden to produce Solar Energy for a period of one-hundred and eighty (180) consecutive days due to a mechanical failure or sixty (60) consecutive days in all other instances, you may terminate this Agreement without further obligation.

25. Financing Accommodations. In order to finance the construction and installation of the Solar Garden, we may borrow money from a Lender ("Lender") who will require that we provide them with a security interest in the Solar Garden and in our contract with you and other customers. You understand that we may finance the acquisition, development, installation, operation and maintenance of the Solar Garden with financing or other accommodations from one or more financial institutions and that our obligations to the Lender may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a first priority security interest in the Solar Garden (collectively, the "Lender's Security Interest"). In order to facilitate the necessary financing, you consent to our granting to Lender the Lender's Security Interest. You acknowledge and agree that: (i) you and all of your rights under this Agreement are and will be subject and subordinate to the Lender's Security Interest (and as later modified by any and all renewals, modifications, supplement, amendments, consolidations, replacements, substitutions, additions, and extensions); and (ii) no amendment or modification of this Agreement is permitted without Lender's prior written consent, with the exception of our approval of a change in your participation under this Agreement as set out in Section 15.

26. Lender's Default Rights. If we default under our financing documents with our Lender, the follow provisions apply:

- A. The Lender, through its security interest, will be entitled to exercise any of our rights and remedies under this Agreement. The Lender will also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the Solar Garden.
- B. The Lender will have the right, but not the obligation, to pay all sums due from us under this Agreement and to perform any other act, duty or obligation required of us, and to cure any default by us in the time and manner provided by the terms of this Agreement. Nothing requires the Lender to cure any default by us (a "Denver II Default") under this Agreement, to perform any act, duty or obligation of Denver II under this Agreement, unless the Lender has succeeded to our rights under this Agreement, but Customer hereby gives Lender the option to do so.
- C. If the Lender exercises its remedies under the Lender's Security Interest in the Solar Garden, including any sale by the Lender, whether by judicial proceeding or under any power of sale, or any conveyance from us to Lender (or its assignee) in lieu of a sale, the Lender will give you notice of the transfer or assignment of this Agreement. If Lender exercises these remedies, it will not constitute a default under this Agreement, and will not require your consent. Parties acknowledge and agree that, upon receipt of written notice and direction by any Lender of Solar Services Provider that Solar Services Provider is in default under its financing agreements with Lender causing the Lender to foreclose on the Lender's Security Interest, and notwithstanding any instructions to the contrary by Solar Services Provider, the City, if directed in writing by Lender, will amend this Agreement to recognize such Lender, or any third party to whom such Lender has reassigned the rights of Solar Services Provider under this Agreement, as the proper and lawful provider of services under this Agreement and fully entitled to receive payments with respect thereto so long as such Lender (or its assignee) performs the obligations of Solar Services Provider hereunder. The City shall be protected and shall incur no liability in acting or proceeding in good faith upon any such foregoing written notice and direction by Lender which the City shall in good faith believe (A) to be genuine and (B) a copy of which shall have been delivered to Solar Services Provider. 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 notice and direction, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements. The Executive Director of General Services shall (A) retain all assignment notices as a register of all assignees (other than registered owners of certificates of participation) and (B) shall be responsible for making any payments under the terms of this Agreement only if an appropriation has been effected by the City for such purpose, and *only* to the Solar Services Provider at the address set forth in herein, notwithstanding any assignment by the Solar Services Provider pursuant to the terms of this section, unless and until this Agreement is modified in a writing signed by the City and Lender amending this Agreement such that the Solar Services Provider shall be the Lender. Upon amendment, the Lender shall assume all of the rights and obligations of the under this Agreement, which shall continue in full force and effect, presuming no default is continuing. The City understands and agrees that while the Lender has the right to perform any act, duty, obligation or make payment required of Solar Services Provider, or to cure any default of the Solar Services Provider, Lender is under no obligation to do so. The Parties agree the Lender's exercise of any remedies against the Solar Services Provider shall not in itself create a default under this Agreement.
- D. Upon any rejection or other termination of this Agreement under any process undertaken with respect to us under the United States Bankruptcy Code, you agree to enter into a new agreement with Lender or its assignee under substantially the same terms as this Agreement if Lender requests you to do so within ninety (90) days of the termination or rejection of this Agreement.
- E. At our request, you agree to deliver to Lender and Denver II an accurate and fully executed Acknowledgement and Confirmation to Lender in substantially the form of Attachment D to this Agreement, in which you acknowledge and confirm that the legal and beneficial ownership of the Solar Garden remains in Denver II, or its affiliate, and that the Solar Garden is the property of Denver II, or its affiliate.

27. Lender's Right to Cure. Regardless of any contrary term of this Agreement:

- A. You will not terminate or suspend this Agreement unless you have given the Lender prior written notice of your intent to terminate or suspend this Agreement. In your notice you will describe the event giving rise to a Denver II Default, and provide Lender with the opportunity to cure the Denver II Default within thirty (30) days after such notice or any longer period provided for in this Agreement. If the Denver II Default reasonably cannot be cured by the Lender within the period provided and the Lender commences and continuously pursues cure of such Denver II Default within that period, the period for cure will be extended for a reasonable period of time under

the circumstances, but not to exceed an additional thirty (30) days. Denver II's and Customer's respective obligations will otherwise remain in effect during the cure period.

- B. If the Lender or its assignee (including any buyer or transferee) acquires title to or control of Denver II 's assets and within the applicable time periods cures all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such the Lender or third party buyer or transferee will no longer be in default under this Agreement, and this Agreement will continue in full force and effect.
- C. At the request of Lender and/or its assignee, you agree to execute and deliver any accurate document, instrument, or statement (but not including any payment) required by law or otherwise as reasonably requested by Lender or its assignee in order to create, perfect, continue or terminate the security interest in favor of Lender in all assets of Denver II, and to secure the obligations evidenced by Lender's Security Interest.

28. Cooperation. Upon a Customer Default or a Denver II Default, we will cooperate with each other so as to preserve our right to the RECs and other non-energy benefits attributable to your Production Capacity and Solar Energy.

29. Federal Income Tax Matters. We agree that, for Federal income tax purposes, the transactions described in the Agreement will be characterized as follows:

- A. You will purchase your Solar Energy from Denver II.
- B. Your Solar Energy purchase will be treated as a service contract under Internal Revenue Code Section 7701(e).
- C. We will sell your Solar Energy to Xcel Energy under Solar*Rewards Community Agency Agreement.
- D. You will receive a monthly Bill Credit from Xcel Energy in exchange for your Solar Energy.
- E. Regardless of what any other provision of this Agreement may say to the contrary, you will not bear any financial burden if there is nonperformance by Denver II 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 you and includes you being deemed to bear any significant financial burden.
- F. Regardless of what any other provision of this Agreement may say to the contrary, you 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 you.
- G. Regardless of what any other provision of this Agreement may say to the contrary, or what any other agreement between us may say to the contrary, you will not have an option to purchase, and you will not be required to purchase, any portion of the Solar Garden. This prohibition also applies to any party related to you.
- H. Regardless of what any other provision of this Agreement may say to the contrary, you 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 you.

We agree that all tax returns, information statements, reporting requirements, and other filings related to taxes made by either of us will be made so that they comply with the tax characterizations described in paragraphs (a) through (h) above, unless the law in effect at the time requires us to do otherwise.

30. Force Majeure. If we are unable to perform all or some of our obligations under this Agreement because of a Force Majeure Event, we will be excused from whatever performance is affected by the Force Majeure Event, provided that: (a) as soon as is reasonably practical, we provide you with notice describing the Force Majeure Event; (b) the suspension of our obligations is limited to the scope and the duration required by the Force Majeure Event; and (c) no obligation of ours that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event will be excused as a result of such Force Majeure Event.

"Force Majeure Event" means any event, condition or circumstance beyond the control of and not caused by Denver II 's fault or negligence. It will include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of God; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; tornado; hail; volcanic activity; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any governmental authority (provided such order has been

resisted in good faith by all reasonable legal means); the failure to act on the part of any governmental authority (provided such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, power or voltage surge caused by someone other than us, including a grid supply voltage outside of the standard range specified by the utility's equipment or products (but not to the extent that any such availability of any of the foregoing results from Denver II 's failure to have exercised reasonable diligence); and failure of equipment not utilized by us or under our control.

31. Termination upon Force Majeure. If we are prevented from performing under this Agreement by reason of Force Majeure for a continuous period of three hundred sixty-five (365) calendar days during the Term, then either Party may terminate this Agreement, without liability on either of our parts to the other, upon thirty (30) days written notice. In no event shall a Force Majeure Event excuse a party from the payment of money or the performance of its indemnity obligations under this Agreement. A Non-Appropriation Event will not constitute a Force Majeure Event.

32. Denver II Indemnity.

- A. The Solar Services Provider shall indemnify, defend and hold harmless the City, including its elected and appointed officials, employees and agents, against (1) any and all damages, including loss of use, to property, including City property; (2) injuries to or death of any person or persons (including officers, agents and employees of the City); and (3) any and all claims, demands, suits, causes of action, liabilities, fines, penalties, costs, expenses, or proceedings of any kind or nature, including workers' compensation claims, of or by anyone, regardless of the legal theory(ies) upon which premised, in any way resulting from, relating to, or arising out of, directly or indirectly, the acts or omissions of the Solar Services Provider or those performing under it in connection with its operations or performance under the Agreement or its use or occupancy of real or use of personal property hereunder, including acts or omissions of affiliates, agents, officers, employees, contractors, representatives, invitees, or licensees of the Solar Services Provider or its sub-consultants, subcontractors, or other entities performing under it in connection with its operations or performance under the Agreement. The Solar Services Provider's indemnity obligation does not apply to liability or damages proximately caused by the negligence of the City's officers, agents and employees.
- B. The indemnity obligation covers the City's defense costs should the City, in its sole discretion elect to provide its own defense. The City retains the right to approve counsel, if any, selected by the Solar Services Provider to fulfill the foregoing indemnity obligation, which right of approval will not be unreasonably withheld.
- C. The indemnity obligation includes litigation fees and expenses, including court filing fees, court costs, arbitration fees or costs, witness fees, and all other fees and costs of investigating and defending or asserting any claim for indemnification under the Agreement, including in each case, attorneys' fees, other professionals' fees and disbursements.
- D. Insurance coverage requirements specified in the Agreement in no way lessen or limit the liability of the Solar Services Provider under the terms of this indemnification obligation. The Solar Services Provider shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection in the performance of the Agreement.
- E. The indemnification obligation shall survive the expiration or termination of this Agreement.

33. Disputes. Except for invoice related disputes which shall be governed by section 11 of the Agreement, all other disputes between the City and Solar Services Provider regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b), *et seq.* For the purposes of that procedure, the City official rendering a final determination shall be the Executive Director.

34. Notices. All notices required to be given to the City or Solar Services Provider hereunder shall be in writing and sent by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or 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

Solar Services Provider: Denver Community Solar Garden II LLC

211 Carnegie Center
Princeton, New Jersey 08540
Attention: Regional General Counsel

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 days after the date such notice is mailed to Solar Services Provider or Executive Director.

35. Miscellaneous.

- A. Entire Agreement; Amendment; Waiver.** This Agreement contains the entire agreement and understanding between us concerning this Agreement and supersedes any prior or contemporaneous agreement, either written or verbal. Any changes or amendments to, or waivers of, any provisions of this Agreement will only be effective if they are in writing and signed by both of us. Our failure at any time to require strict performance by you of any of the provisions of this Agreement will not waive or diminish our right thereafter to demand strict compliance by you of that provision or of any other provision of this Agreement. If any provision of this Agreement is determined to be unenforceable, the remaining provisions will be enforced in accordance with their terms or will be interpreted so as to make them enforceable. The terms of this Agreement that expressly or by their nature survive termination shall continue thereafter until fully performed, which will include without limitation the obligation to make payments.
- B. Binding Effect.** This Agreement will be binding upon and inure to the benefit of each of us, and to our successors and permitted assigns, but nothing in this Agreement, express or implied, is intended to confer or will confer upon any other entity or person any benefits, rights or remedies except as expressly set forth in this Agreement.
- C. Authority.** You have the full power and authority to execute and deliver this Agreement and to perform your obligations hereunder. Your execution and performance of this Agreement and of your obligations under this Agreement have been duly authorized by all necessary action.
- D. Marketing and Promotional Materials.** We will have the right to use graphical representations or photography of the Solar Garden in our marketing and promotional materials. Denver II shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Denver II's advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Denver II shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials. You agree to the use of your name and logo, if applicable, in our marketing materials in connection with the Solar Garden and any future Community Solar Garden or similar projects undertaken by Denver II. We agree not to disclose any other information in connection with our marketing and promotional materials.
- E. Assignment by Denver II.** Denver II may assign this Agreement along with all of our rights and obligations to any affiliate or third party without notice, for any purpose, including, the collection of unpaid amounts, or in the event of an acquisition, corporate reorganization, merger or sale of substantially all of its assets to another entity.

The Solar Services Provider and the City agree that any such assignment of this Agreement or the Solar Services Agreement is not intended as the offer or sale of a security, and the Solar Services 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 securities laws, the City shall not be responsible for compliance with any such laws, and any offering or other disclosure document delivered by the Solar Services 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.

F. Conflict Of Interest.

- i. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the Solar Services 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, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

- ii. The Solar Services Provider shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Solar Services 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 Solar Services Provider by placing the Solar Services Provider's own interests, or the interests of any party with whom the Solar Services Provider has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Solar Services Provider written notice describing the conflict.

G. No Discrimination In Employment. In connection with the performance of work under the Agreement, the Solar Services 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 variance, marital status, or physical or mental disability. The Solar Services Provider shall insert the foregoing provision in all subcontracts hereunder.

H. Compliance With All Laws. Solar Services 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.

I. Governing Law; Venue. The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code. The Charter, Revised Municipal Code and Executive Orders of the City and County of Denver are expressly incorporated into the Agreement. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado Second Judicial District.

J. Inspection of Records.

- i. The City and the Auditor of the City or any of his duly authorized representatives, until the expiration of three years after the final payment under this Agreement, shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Solar Services Provider which are related to Work performed under this Agreement without regard to whether the Work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.
- ii. 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.

K. 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 Solar Services 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 Solar Services Provider that any person other than the City or the Solar Services Provider receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

L. Independent Contractor. Solar Services 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 Solar Services Provider is a partner, joint venturer, agent or representative of the City. Neither the City nor Solar Services 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 Solar Services 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 D.R.M.C.

M. 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

N. 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.

O. Amendments. No modification of this Agreement shall be effective except by written amendment executed by the Parties; provided, however, if Purchaser has been notified that Solar Services 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.

P. 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.

Q. Survival. Any provision(s) 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.

36. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., as applicable now or hereafter amended. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement

37. Electronic signatures and electronic records. Denver II 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.

REMAINDER OF PAGE INTENTIONALLY LEFT 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-201521195-00

Contractor Name: Denver Community Solar Garden II LLC

By: *Craig Cornelius*
Craig Cornelius (May 27, 2015)

Name: Craig Cornelius
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Attachment A

Acknowledgement of Bill Credit Calculation

Customer acknowledges the following regarding the calculation of Bill Credits:

1. **Bill Credit Dynamics.** Customers are motivated to participate in solar gardens by factors that are unique to each customer's situation and priorities. We describe the dynamics involved in calculating your Bill Credit in detail so as to assist you in understanding and evaluating your specific opportunity to reduce your energy costs as a participant in the Solar Garden. Of course, the weighing and prioritization of energy cost savings relative to other reasons to participate in a Solar Garden is unique to each customer.
2. **Electricity Consumption.** This agreement does not affect your ability to increase or decrease the amount of electricity you receive from Xcel Energy. Your Bill Credit and your Monthly Payment are based on the amount of your Solar Energy produced, not your electricity consumption for any given month. If you consume less energy than the amount of your Solar Energy, your Bill Credit could be more than your electricity bill. In that case, Xcel Energy will roll forward your Bill Credit to offset future electricity consumption. If you terminate your electricity service with Xcel Energy before using all of your Bill Credits, they will expire and cannot be transferred.
3. **Changes in Xcel's Cost of Electricity and Bill Credits.** Regulated utilities periodically seek increases in the rates that they charge with the Colorado Public Utilities Commission ("PUC"). Rate increases may change your Bill Credits. A change in rates as regulated by the PUC may increase or decrease the amount of bill credits for each ratepayer class. We have no authority with respect to changes in electricity rates charged to your ratepayer customer class. All rate changes are regulated by the Colorado PUC under Colorado law.
4. **Bill Credits for Non-Demand Tariff Customers.** Under Colorado Law, customers who do not take service under a demand tariff receive Bill Credits determined by multiplying the amount of their Solar Energy by the total retail electricity rate charged to their ratepayer class of service, including all of the billed components within your rate. Xcel Energy will subtract a per kWh charge from your Bill Credit that represents its costs of delivering solar energy to your premise, resulting in your fixed

net Bill Credit. All rate changes are regulated by the Colorado PUC under Colorado Law, (See C.R.S. §40-2-127, *et seq.* and Rule 3665, 4 CCR 723-3). We have no authority with respect to decisions by the Colorado PUC.

5. **Bill Credits for Demand Tariff Customers**. For customers who take service under a demand tariff, Xcel Energy calculates their Bill Credit on an annual basis by dividing a customer's total actual electric charges during the current calendar year by the customer's total electricity consumption for the prior twelve (12) months, and subtracting Xcel Energy's solar gardens charge. This formula has the effect of increasing the per kWh amount of Bill Credits for low load factor demand tariff customers and lowering the per kWh amount of Bill Credits for high load factor demand tariff customers. If you are currently a demand tariff customer, the relationship between your current energy consumption and your peak capacity demand may change over time based on your use of energy. We do not control your use of electricity through this Agreement. We are always available to provide recommendations on your energy consumption, or to direct you to the best resources to manage your consumption.

You agree that periodic changes in the amount of your Bill Credit, which may occur based on your level of electricity consumption or changes to rates and charges in Xcel's Tariffs as regulated by the Colorado PUC under Colorado Law, do not affect your obligation for the Monthly Payment. You also agree that you are responsible for your energy consumption and for assessing the impact of pricing dynamics for your meters on demand tariffs, and that your obligation for the Monthly Payment is independent of the resulting per kWh amount of your Bill Credit.

Attachment B

**Public Service Company of Colorado Form Modified by Agreement of Both
Signatories and Public Service Company of Colorado**

SRC SUBSCRIBER AGREEMENT

FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)

SRC Subscriber Name: City and County of Denver _____

SRC Subscriber Retail Customer Account No.: See Appendix A _____

SRC Subscriber Service Address: See Appendix A _____

SRC Subscriber E-mail Address: richard.gonzales@denvergov.org _____

SRC Subscriber Mailing Address: 201 West Colfax, Dept 1106, Denver, CO 80202 _____

SRC Subscriber Telephone No: 7209133072 _____ (Primary) _____ (Alt.)

SRC Producer (Subscriber Organization) Name: Denver Community Solar Garden II
LLC _____

Solar Garden ID No: SRC 18664 _____

Name and Location of Solar Garden: 17897 E. 51st Ave Unit SRC 18664

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

The undersigned SRC Subscriber hereby authorizes Denver Community Solar Garden II LLC, ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act on behalf of SRC Subscriber solely for the limited 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 authority for SRC Producer to enter into a long-term contract between SRC Producer and Public Service 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 Agreement. This Agreement shall only serve to authorize SRC Producer to act on behalf of SRC Subscriber 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 Agreement and Termination.

- a) This 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 Agreement shall automatically be terminated upon:
 - i. The effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or
 - ii. Public Service's receipt of notice from either the SRC Producer or SRC Subscriber 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; or
 - iii. 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 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 Agreement, SRC Subscriber represents 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 Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER

SRC PRODUCER

City and County of Denver _____ Denver Community Solar Garden II
LLC

By: _____
Title: _____

By: _____
Title: _____

Date: _____

Date: _____

Appendix A

SRC SUBSCRIBER RETAIL CUSTOMER ACCOUNT NUMBERS AND SERVICE ADDRESSES

Address	City and County	Account Number	Premise Number	Initial Subscription (kW)
3051 W 6 th Ave	Denver	2009845	301049746	25
1100 S. Kearny St	Denver	2009813	301774408	10
1900 E. Iowa Ave	Denver	2009829	301337092	14
1260 Osage St.	Denver	2009824	301872159	8
2500 York St	Denver	2083020	302042801	74
4750 W. Byron Pl	Denver	2009842	301365193	12.75
8550 E. Lowry Blvd	Denver	8711106	304078754	36
5001 Vrain St	Denver	2083025	300763696	20
			Total	199.75

ATTACHMENT C

Contract Payment Schedule

Contract Year	\$/kWh	Expected annual kWh production	Annual Contract Amount (\$)
1	0.1200	440,308	52,837
2	0.1235	438,107	54,106
3	0.1271	435,916	55,405
4	0.1307	433,737	56,689
5	0.1345	431,568	58,046
6	0.1384	429,410	59,430
7	0.1425	427,263	60,885
8	0.1466	425,127	62,324
9	0.1508	423,001	63,789
10	0.1552	420,886	65,322
11	0.1597	418,782	66,879
12	0.1643	416,688	68,462
13	0.1691	414,604	70,110
14	0.1740	412,531	71,780
15	0.1791	410,469	73,515
16	0.1843	408,416	75,271
17	0.1896	406,374	77,049
18	0.1951	404,342	78,887
19	0.2008	402,321	80,786
20	0.2066	400,309	82,704

ATTACHMENT D

Acknowledgment and Confirmation to Lender

This Acknowledgement and Confirmation to Lender, dated as of _____, 201__ (this "Acknowledgement"), is made by City and County of Denver ("Customer") under that certain Community Solar Services Agreement dated _____, 201__ (the "CSSA") with Denver Community Solar Garden II LLC, a Colorado company ("Denver II"). This Acknowledgement is provided pursuant to the CSSA to _____ ("Lender"), which is providing financial accommodations to Denver II. The solar photovoltaic system (the "Solar Garden") will be installed, operated and maintained by Denver II pursuant to the CSSA. The Solar Garden is located at Denver II 's facility at _____.

1. Acknowledgement of Collateral Assignment.

- (a) Customer acknowledges the collateral assignment by Denver II to Lender, of Denver II 's right, title and interest in, to and under the CSSA, as provided in the CSSA.
- (b) Lender, as the assignee of collateral, is entitled to exercise any and all rights of lenders generally with respect to Denver II 's interests in the CSSA, including those rights provided to Lender in the CSSA.
- (c) Customer acknowledges that it has been advised that Denver II has granted a first priority security interest in the Solar Garden to Lender and that Lender has relied upon the characterization of the Solar Garden as personal property, as agreed in the CSSA in accepting such security interest as collateral for its financial accommodations to Denver II .
- (d) Until further written notice, Customer agrees to make all payments due Denver II under the CSSA to Lender, and to provide any notices to Lender at the following address:

Attention: _____

Reference: _____

to the following account:

Account Number: _____

2. Confirmation. Customer confirms the following matters for the benefit of Lender:

- (a) To Customer's knowledge, without investigation, there exists no event or condition that constitutes a default, or that would, with the giving of notice or lapse of time, constitute an event of default, under the CSSA.
- (b) Customer is not aware of any existing lease, mortgage, security interest or other interest in or lien which could attach to the Solar Garden an interest adverse to Lender's security interest therein.

City and County of Denver, Customer

By: _____

Name:

Attachment E

Total Production Capacity

Name	Address	Account Number	Premise Number	120% kW Capacity
Barnum North Park	3051 W 6th Ave	2009845	301049746	25
Garland Park Ball Field Restrooms	1100 S. Kearny St	2009813	301774408	10
Veterans Park Ball Field	1900 E. Iowa Ave	2009829	301337092	14
Lincoln Park IRR Pump	1260 Osage St.	2009824	301872159	8
City Park Golf Pump Station	2500 York St	2083020	302042801	74
P&R Maint.-Sloan's Lake	4750 W. Byron Pl	2009842	301365193	12.75
Lowry Sports Complex	8550 E. Lowry Blvd	8711106	304078754	36
Willis Case Golf Pump House	5001 Vrain St	2083025	300763696	20
			Total	199.75

Attachment F
Oversubscription Capacity

INTENTIONALLY DELETED

Attachment G

Solar Rewards Community Agreement

Pages to Follow. For Reference Only



Solar Garden ID No. _____

Solar*Rewards Community 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. “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.2 hereof.

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

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

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

1.6. “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.

1.7. “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.

1.8. “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.

1.9. “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.

1.10. “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.

1.11. “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.

1.12. “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.

1.13. “Renewable Energy Credit” or “REC” shall have the meaning set forth in 4 CCR 723-3-3652(t) and means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of capacity and/or electric energy generated from an Eligible Energy Resource, including any and all environmental air quality credits, benefits, emissions reductions, off-sets, allowances, or other benefits as may be created or under any existing or future statutory or regulatory scheme (federal, state, or local) by virtue of or due to the PV System’s actual energy production or the PV System’s energy production capability because of the PV System’s environmental or renewable characteristics or attributes. 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. One REC results from one megawatt-hour of electric energy generated from an eligible energy resource.

1.14. “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.

1.15. “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.

1.16. “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.

1.17. “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.

1.18. “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.

1.19. “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.

1.20. “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.

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 4.6 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 Purchase and Sale of RECs Associated with Subscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, SRC Producer agrees to sell and Public

Service agrees to purchase all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Public Service at the Production Meter attributable to Subscriptions held by all SRC Subscribers, based upon the Monthly Subscription Information applicable to each Production Month. 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 power generated by the PV System. Public Service shall pay SRC Producer the price of _____ per MWh for RECs purchased pursuant to this section. 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.

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

2.4 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.

2.5 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(m) 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(m) 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 premises served by Public Service and shall be within the same county as the Solar Garden Site, except that, if the SRC Subscriber's designated premise is located in a county with a population of less than 20,000 residents according to the most recent available census figures, the designated premise may be in another county adjacent to the county where the Solar Garden Site is located, so long as the adjacent county also has a population of less than 20,000 residents and the designated premises is within Public Service's retail electric service territory. 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 five percent (5%) 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(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3-3652.

(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) 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 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.

4.3 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 Garden Program. If Commercial Operation is not achieved within one year of the date of the application and receipt of the deposit by Public Service, such deposit shall become non-refundable and forfeited by SRC Producer.

4.4 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.

4.5 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 4.5, 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, and further multiplied by the positive difference resulting, if any, by subtracting the price of RECs as set forth in Section 2.2 above from the weighted-average price for RECs based on the winning bids under Public Service's most recent bid offering under its Solar*Rewards program in Colorado.

4.6 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 and RECs to be purchased and sold in accordance with Article II hereof. 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.

4.7 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.

4.8 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.

4.9 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.

4.10 No Relocation. The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.11 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).

4.12 Annual Reports. Within ten (10) days of its issuance, SRC Producer shall provide to Public Service a copy of its public annual report, including a copy of the annual report provided to each SRC Subscriber, all as required by 4 CCR 723-3-3665(e)(II).

4.13 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 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.

5.2 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.

5.3 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.

5.4 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 Seller and Public Service with respect to the Interconnection Agreement.

5.5 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 Seller 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

7.1 Default. Any breach of a material term or provision of this Agreement shall be considered an event of default hereunder. 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. 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.) 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.

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 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.

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
414 Nicollet Mall, 6th Floor
Minneapolis MN 55401
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): _____

SRC Producer Representative: _____

Title: _____

SRC Producer Signature: _____ **Date:** _____

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:** _____

SAMPLE

Marc Bencivenni
Senior Vice President
SunShare Management LLC
1441 18th Street, Suite 400
Denver, Colorado, 80202

Re: Acknowledgement Letter Relating to the Solar*Rewards Community Agreement

To Whom It May Concern:

Denver Community Solar Garden II LLC (“DCSGII”) and Public Service Company of Colorado, d/b/a Xcel Energy (“Public Service”) are parties to that certain Solar*Rewards Community Agreement, (the “SRC Agreement”), for Solar Garden ID SRC018664 (the “Denver Solar Garden 018664”). SunShare Management LLC (“SunShare”) is acting as project administrator on behalf of DCSGII.

Subsequent to the DCSGII and Public Service executing the SRC Agreement, SunShare has been notified that the City of Denver, Colorado (the “City of Denver”) desires to participate as a subscriber in the Denver Solar Garden 018664. However, the City of Denver has notified SunShare and Public Service that it interprets Article XI of the Colorado Constitution as prohibiting a governmental entity from participating in private business and from granting private parties the full weight and authorization of a governmental entity. Therefore, the City of Denver believes that it cannot participate in the Denver Solar Garden if such participation gives rise to an “agency” relationship between the City of Denver and SunShare. The City of Denver also notes that it interprets both Title 40 of Colorado Revised Statutes and the Code of Colorado Regulations as not requiring that an agency relationship be created, but only that an authorization to “act on behalf of” the subscriber be granted.

Prior to this Acknowledgement Letter, both SunShare and the City of Denver have corresponded with and received confirmation from Public Service that Public Service has reviewed and, solely for the purposes of facilitating the City of Denver’s participation in Denver Solar Garden 018664, acquiesced to amending the form “SRC Subscriber Agency Agreement” attached as Exhibit B to the SRC Agreement. A copy of SunShare’s correspondence with Public Service, along with the revised “SRC Subscriber Agreement” discussed in and attached to that correspondence, is attached hereto as Attachment A.

Therefore, to conform to the amended “SRC Subscriber Agreement,” through the execution of this Acknowledgment Letter, SunShare sets forth and acknowledges, solely for the purposes of the City of Denver’s participation in Denver Solar Garden 018664 and not for

any other purposes, that it interprets the following sections of the SRC Agreement as follows:

1. For the Recitals, DCSGII will not act “as authorized agent for” the City of Denver, but shall instead solely act “on behalf of” the City of Denver for the limited purposes set forth in the revised SRC Subscriber Agreement attached to the correspondence in Attachment A;
2. For Sections 1.18, 1.19, and 10.2, the City of Denver will not execute a “SRC Subscriber Agency Agreement,” but will execute a “SRC Subscriber Agreement” attached to the correspondence in Attachment A.
3. For Section 1.19, DCSGII will not “act as SRC Subscriber’s agent”, but shall instead solely act “act on behalf of SRC Subscriber” for the limited purposes set forth in the revised SRC Subscriber Agreement attached to the correspondence in Attachment A; and
4. City of Denver will not execute the “SRC Subscriber Agency Agreement” attached as Exhibit B to the SRC Agreement, but will execute a “SRC Subscriber Agreement” attached to the correspondence in Attachment A.

SunShare’s acknowledgement of the interpretations noted in this Acknowledgment Letter do not constitute any concurrence in, or agreement to, the City of Denver’s legal position or conclusions. The above interpretations shall apply solely to circumstances of the City of Denver’s participation in the Denver Solar Garden 018664, and shall not apply to any other subscriber or community solar garden participating in Public Service’s Solar*Rewards Community program, nor shall anything in this Acknowledgment Letter be viewed as acquiescence to the same or similar interpretations of any other current or future agreements between SunShare and Public Service.

No changes or modifications to the SRC Agreement or any exhibit thereto are being made pursuant to this Acknowledgment Letter.

IN WITNESS WHEREOF, this Acknowledgment Letter is executed by the undersigned authorized representative of SunShare.

SunShare Management LLC

By: _____

Name: _____

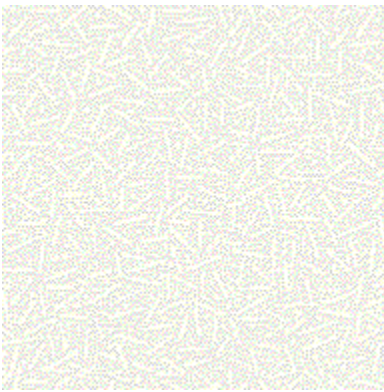
Title: _____

Date: _____

ATTACHMENT A

[See attached correspondence and document]

From: "McGann, David W" <David.W.McGann@xcelenergy.com>
Date: Apr 27, 2015 12:12 PM
Subject: RE: Solar Community Gardens subscriber issue
To: "Heydman, Laurie J. - Department of Law" <Laurie.Heydman@denvergov.org>
Cc: "Benavidez, Adrienne - General Services Administratn" <Adrienne.Benavidez@denvergov.org>, "Gonzales, Richard L. - GS Strategic Initiatives" <Richard.Gonzales@denvergov.org>, "Dittman, Brandon M. - City Attorney Office" <Brandon.Dittman@denvergov.org>, "JW Postal" <jw@mysunshare.com>, "Marc Bencivenni" <marc@mysunshare.com>, "Cray, Kevin C" <Kevin.Cray@xcelenergy.com>, "Moffit, Dawn E" <Dawn.E.Moffit@xcelenergy.com>



Laurie:

Thanks for explanation and the edits. I had just one edit to page one. It simply makes clear that the form has been modified by agreement of all parties.

Our acceptance of your changes should in no way be construed as our concurrence in, or agreement to, your legal position or theories.

If this change is acceptable to you and SunShare, we should be ready to go.

Thanks,

Dave

David W. McGann

Assistant General Counsel

Xcel Energy | Responsible By Nature

1800 Larimer Street, 11th Floor

Denver, CO 80202

P: [\(303\) 294-2035](tel:3032942035) F: [\(303\) 478-6066](tel:3034786066)

E: david.w.mcgann@xcelenergy.com

XCELENERGY.COM

This email is covered by the Electronic Communications Privacy Act, 18 USC Sections 2510-2521. This email, and any attachments, may contain **confidential, private and/or privileged** material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by reply mail and delete all copies of this message and any attachments.

From: Heydman, Laurie J. - Department of Law [mailto:Laurie.Heydman@denvergov.org]

Sent: Friday, April 24, 2015 6:35 PM

To: McGann, David W

Cc: Benavidez, Adrienne - General Services Administratn; Gonzales, Richard L. - GS Strategic Initiatives; Dittman, Brandon M. - City Attorney Office; JW Postal; Marc Bencivenni

Subject: Solar Community Gardens subscriber issue

David-following up on our conversation earlier this month, I am putting in writing the City's issue with the term "agency" in your prepackaged form of Subscriber agreement. I am attaching the City's minor revisions to the words "agent" or "agency." I also deleted the word "warrant" for reasons explained in the comment to the document. I would note that neither Title 40 of Colorado Revised Statutes nor the Code of Colorado Regulations require that an agency be created. The law and corresponding regulations only require that authorization to "act on behalf of" the subscriber is granted. The proposed alternative wording meets the legal requirement.

The City has an additional concerns beyond the fact that "agency" relationship goes beyond what is required by law. As you know, an agency is a unity of interest between two otherwise unrelated parties. The agent is authorized to act in the stead of the principal and bind the principal as if the agent were, in fact, the principal. The City has long interpreted Article XI of the Colorado Constitution as prohibiting the City as a government from participating in private business and certainly from having private parties carry the full weight and authorization of a governmental entity. While the participation in solar gardens was specifically allowed in Article XI (because presumably it would otherwise have prohibited the City from even purchasing shares in a solar garden) that does not presume that the purchase of shares must be elevated to the unity of interest which occurs in legal definition of "agency". The Statute at §40-2-127 and the Rule at 4CCR 723-3 are quite clear that the solar provider must only be authorized to perform limited acts "on behalf of" the subscriber.

Secondly, the Mayor under the Denver Charter may authorize limited performance of services but only the Mayor under Charter section 2.2.4 (available for free at www.municode.com) has the authority to enter into contractual agreements that bind the City. An agency relationship by definition would authorize the agent to execute contractual obligations that bind the principal and such action would violate Denver's Charter.

SunShare has expressed that it does not object to corresponding changes from "agent" or "agency" with Denver be made to reflect that it is authorized to "act on behalf of" Denver in the Solar Rewards Community Agreement that is executed between Xcel and SunShare in tandem with the Subscriber Agreement.

Xcel has previously agreed to similar minor revisions to its to allow the City to execute other agreements and we are hopeful that you are amenable to these insubstantial but legally meaningful revisions.

We look forward to getting this resolved soon,



Laurie Heydman | Assistant City Attorney

Denver City Attorney's Office | City and County of Denver

[720-913-3278](tel:720-913-3278) Phone | [720-913-3180](tel:720-913-3180) Fax

laurie.heydman@denvergov.org

This e-mail transmission from the City and County of Denver and any documents, files or previous e-mail messages attached to it are intended solely for the individuals to whom it is addressed and may contain information which is confidential, legally privileged, and or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any unauthorized review, forwarding, printing, copying, distribution, or use of this transmission or the information it contains is strictly prohibited. A misdirected transmission does not constitute waiver of any applicable privilege. If you have received this transmission in error, please immediately notify me at [720-913-3275](tel:720-913-3275) and delete the original transmission and its attachments. Thank you.

Attachment B

(Public Service Company of Colorado Form) Modified by Agreement of Both Signatories and Public Service Company of Colorado

SRC SUBSCRIBER AGREEMENT

FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)

SRC Subscriber Name: City and County of Denver _____

SRC Subscriber Retail Customer Account No.: See Appendix A _____

SRC Subscriber Service Address: See Appendix A _____

SRC Subscriber E-mail Address: richard.gonzales@denvergov.org _____

SRC Subscriber Mailing Address: 201 West Colfax, Dept 1106, Denver, CO 80202 _____

SRC Subscriber Telephone No: 7209133072 _____ (Primary) _____ (Alt.)

SRC Producer (Subscriber Organization) Name: Denver Community Solar Garden II LLC _____

Solar Garden ID No: SRC 018664 _____

Name and Location of Solar Garden: 5090 North Telluride St. Unit SRC018663 _____

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): See Appendix A __kW

The undersigned SRC Subscriber hereby authorizes Denver Community Solar Garden II LLC, ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act on behalf of SRC Subscriber solely for the limited 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 authority for SRC Producer to enter into a long-term contract between SRC Producer and Public Service 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 Agreement. This Agreement shall only serve to authorize SRC Producer to act on behalf of SRC Subscriber 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 Agreement and Termination.

- a) This 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 Agreement shall automatically be terminated upon:
 - i. The effective date of the termination of the contract between SRC Producer and Public Service for the purchase and sale of Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System; or
 - ii. Public Service's receipt of notice from either the SRC Producer or SRC Subscriber 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; or
 - iii. 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 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 Agreement, SRC Subscriber represents 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

Comment [A1]: The City can make representations but cannot "warrant" (which is to pledge the full faith and credit of the City) without a vote of the people.

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 Agreement was duly executed by the undersigned authorized representatives of SRC Subscriber and SRC Producer.

SRC SUBSCRIBER

City and County of Denver

By: _____

Title: _____

Date: _____

SRC PRODUCER

Denver Community Solar Garden II

LLC

By: _____

Title: _____

Date: _____

Attachment H
(attachment follows)

Consent to Disclose Utility Customer Data

Please provide the following information.

All requested information must be provided for the consent to be valid.

TO BE COMPLETED BY RECIPIENT OF CUSTOMER DATA:

Authorized Recipient of Customer Data ("Company"):

Company Name (including Trade Name, if applicable) Denver Community Solar Garden II LLC

Physical Address: 1441 18th St, Denver, CO, 80202

Mailing Address: Same as above

Phone: 303-296-0919 Email: chris.barker@nrg.com

Company business structure (see below) _____

Name & Title of Customer Data Custodian: Chris Barker

Mailing Address: Same as above

Phone: Same as above Email: Same as above

Name of Company's Colorado agent for service of process: Denver Community Solar Garden II LLC

Mailing Address: Same as above

Phone: Same as above Email: Same as above

Provide to the utility service provider and the customer prior to disclosure the following documents and Information:

- A statement describing Company's business structure (corporation, limited liability company, partnership, sole proprietorship, etc.)
- If Company is a corporation: the name of the state in which Company is incorporated; the location of its principal office, if any, in Colorado; the names of its directors and officers; and a certified copy of its certificate of a good standing authorizing it to do business in Colorado, certified within 6 months prior to the submission of this Consent form
- If Company is a limited liability company; the name of the state in which Company is organized; the complete mailing address and physical address of its principal office; the name of its managers; and a certified copy of its certificate of good standing authorizing it to do business in Colorado, certified within 6 months prior to the submission of this consent
- If Company is a partnership: the names, titles and addresses of all general and limited partners; and a copy of the partnership agreement establishing the partnership and all subsequent amendments

Data To Be Released and Description of Use (Please be specific and fill in all blanks):

Instructions: Company should describe the customer data to be provided in a detailed and clear enough manner to inform the customer and the utility of (1) the specific types of data requested, and (2) the purposes for which the data will be used. (Example—"We seek monthly electricity usage data for the household, in order to show the net gain in efficiency resulting from our energy efficiency upgrades, and we will use this data, aggregated with other customers, to display the results in print and television marketing.")

Company's description, in detail, of the specific type of customer data requested: We Seek 36 months of copies

of the subscriber's bills to verify that the subscriber's kW allocation for participation in a solar garden is within 120% of

the subscribers average annual kWh consumption and to estimate the subscriber's bill credit for participating in the Solar

Rewards* Community Program.

Company's business purpose(s) for, and uses of, customer data: Customer validation and acceptance into Solar*Rewards Community Program

Date(s) of disclosure (to/from): 3/2012-3/2015

This Consent to Disclose Utility Customer Data will be effective until terminated by the customer shown below. The customer must notify the utility service provider in writing of the customer's desire to terminate the consent for release of customer data.

TO BE COMPLETED BY CUSTOMER:

I agree that I am the customer of record for my utility account. I understand that I have an expectation of privacy in my customer data except if disclosure is required by law as provided in 4 C.C.R 723-3 Section 3026(b) (available at the Colorado Public Utilities Commission's website) or if I authorize its disclosure.

I agree to allow my utility service provider ("Utility") to release to Company the types of energy usage data described above for the purpose(s) described above. I understand and agree that such data may reveal information about the way I use energy at my premises. If my electric meter is one that is capable of measuring my energy usage in intervals of an hour or less, such data can be used to gain personal information, such as what appliances I use and when I use them as well as when I am at home and when I am away.

I understand that once customer data has been provided to Company, Utility will have no control over and no responsibility for the Company's use of the data. The Utility shall not be responsible for monitoring or taking any steps to ensure that Company to whom the data is disclosed is maintaining the confidentiality of the data or using the data as intended by customer.

If I refuse to agree to these terms of use consenting to release the data to Company, my utility services will not be affected.

I may terminate my consent to the release of additional data by the Utility to Company at any time by sending a written request with my name and service address to Utility at the mailing and/or electronic mail address listed below.

By my signature, I affirm that I am customer of record and that everything in this document is true and correct. The undersigned and the Company agree that the Company may make agreements with me by electronic means. I agree that this consent, whether in paper or electronic form, has the same legal effect and is authentic and valid. Furthermore, if signing electronically, I agree to receiving information and other communications relating to my consent in electronic form. By applying a signature below, I agree to the above terms and conditions governing my consent.

See Attached

See Attached

See Attached

Customer Account Number

Service Address

Premise

Signature of Customer of Record

Printed Name

Date Signed

TO BE COMPLETED BY RECIPIENT OF CUSTOMER DATA:

You have the option to receive a copy of this document in paper or other nonelectronic form.

To obtain a paper copy of this electronic record, contact SunShare, LLC [INSERT COMPANY NAME] at reserve@mysunshare.com; 303-296-0919 [INSERT APPROPRIATE CONTACT INFORMATION].

You can terminate your consent electronically or through nonelectronic means.

To terminate your consent you may submit a written request to: Xcel Energy [INSERT Utility Name] at 1-800-895-4999 [INSERT APPROPRIATE CONTACT INFORMATION].

You may also submit a written request electronically to Xcel Energy [INSERT UTILITY NAME] at customerservice@xcelenergy.com [INSERT APPROPRIATE WEB OR EMAIL INFORMATION].

in order to view this Agreement and receive electronic communications from SunShare, LLC [INSERT COMPANY NAME], you must have a valid email address and a computer equipped as described below. If your e-mail address changes, you will need to update it.

Hardware/Software*:

Workstation: Must be able to run Adobe Acrobat Reader.

Windows®: Intel® Pentium® II 450MHz, AMD Athlon™ 600MHz or faster processor (or equivalent), 128MB of RAM

Macintosh: PowerPC® G3 500MHz or faster processor, Intel Core™ Duo 1.33GHz or faster processor, 128MB of RAM

Internet connection: recommend broadband

Screen size: recommend minimum resolution 1024x768

Web browser: supports Flash Player and 128-bit encryption (e.g. Internet Explorer 6+, Firefox 1.5+, Safari, Google Chrome)

Adobe Acrobat Reader: recommend v7+ (download at <http://get.adobe.com/reader/>)

If you have a printer, you may also print a copy of this Agreement by simply selecting print from the file menu.

By electronically signing this document, you confirm that you have computer hardware and software that meets the requirements above.

Addendum to Consent to Disclose Utility Customer Data

This Addendum to Consent to Disclose Utility Customer Data lists the account numbers and addresses submitted to Xcel Energy for the release of electric usage data for the following premises owned and operated by The City and County of Denver

Account Number	Premise Number	Service Address
2009845	301049746	3051 W 6 th Ave
2009813	301774408	1100 S. Kearny St
2009829	301337092	1900 E. Iowa Ave
2009824	301872159	1260 Osage St.
2083020	302042801	2500 York St
2009842	301365193	4750 W. Byron Pl
8711106	304078754	8550 E. Lowry Blvd
2083025	300763696	5001 Vrain St