

## AMENDATORY ASSET MANAGEMENT AGREEMENT

This AMENDATORY ASSET MANAGEMENT AGREEMENT is made between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the “City”) and MCKINSTRY ESSENTION, LLC, a Washington limited liability company, authorized to conduct business in Colorado, whose address is 16025 Table Mountain Parkway, Suite 100, Golden, Colorado 80403 (the “Operator”), (jointly “the Parties”, each individually a “Party”).

### RECITALS:

A. The Parties entered into an Agreement dated November 21, 2022, (the “Agreement”) to perform, and complete all of the services and produce all the deliverables set forth on Exhibit A, the Scope of Work, to the City’s satisfaction.

B. The Parties wish to amend the Agreement to update paragraph 24-No Employment of a Worker without Authorization, amend the scope of work and amend the fee schedule/budget.

NOW THEREFORE, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. Section 24 of the Agreement entitled “**NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT:**” is hereby deleted in its entirety and replaced with:

“24. [RESCINDED.]”

2. Exhibit A is hereby deleted in its entirety and replaced with Exhibit A-1, Scope of Work, attached and incorporated by reference herein. All references in the original Agreement to Exhibit A are changed to Exhibit A-1.

3. All references in the original Agreement to Exhibit B, Fee Schedule now refer to Exhibit B and Exhibit B-1. Exhibit B-1 is attached and incorporated by reference herein.

4. As herein amended, the Agreement is affirmed and ratified in each and every particular.

5. This Amendatory Asset Management Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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**Contract Control Number:** CASR-202369909-01\_202264633-01  
**Contractor Name:** MCKINSTRY ESSENTION, LLC

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

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_


\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

CASR-202369909 01\_202264633-01  
MCKINSTRY ESSENTION, LLC

By:  \_\_\_\_\_  
EE0793EEC9FB47E...

Name: Mike Porter  
(please print)

Title: Vice President  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

## **EXHIBIT A-1**

### **SCOPE OF WORK**

#### **Summary**

The City's Office of Climate Action, Sustainability, and Resiliency ("CASR") has selected McKinstry Essention, LLC to act as its third-party solar asset manager ("Operator"). The Operator will provide Operations and Maintenance ("O&M") services, Solar Power Purchase Agreement management and revenue collection services, and additional services as needed on the City's behalf and at the City's direction in accordance with prudent industry standards and this Exhibit.

#### **Definitions of Words and Terms Used**

These words and terms are not specific to this exhibit and may appear elsewhere in this Agreement. Likewise, words and terms defined in other parts of this Agreement may appear in this Exhibit.

- a. "*Asset Management*" means the services provided by the Operator pursuant to Exhibit A.
- b. "*Change Order*" means a written order, signed by City directing Operator to make changes in the Asset Management services provided in this Agreement.
- c. "*Corrective Maintenance (CM)*" means actions taken to diagnose and/or correct equipment faults, failures or damage detected through continuous monitoring or during routine preventative maintenance inspections. Corrective maintenance actions include the material and labor to restore a Generating Facility to its expected performance if any equipment is not performing as expected, damaged, or deemed defective.
- d. "*Extraordinary Maintenance (EM)*" shall mean any activity(s) or action(s) required in the case of major unpredictable events, such as Force Majeure or serial manufacturer defects, that are considered outside the normal course of business.
- e. "*Interconnection Agreement*" shall mean the separate agreement to be entered into between the City and Utility Provider providing the terms and conditions by which a Generating Facility may interconnect in parallel with Utility Provider's electric system at the Site.
- f. "*kWhac*" means kilowatt-hour alternating current of electricity.
- g. "*OEM*" means the original equipment manufacturers for the System Components.
- h. "*Offtaker*" means the City entity who is the counterparty for a Solar Power Purchase Agreement.
- i. "*Preventative Maintenance (PM)*" means scheduled inspection(s) and servicing of Generating Facility in accordance with manufacturer guidelines to prevent performance issues and to maximize equipment life.
- j. "*Project*" means the development, design, and construction of a Generating Facility or set of Generating Facilities.

- k. "Solar Power Purchase Agreement (PPA)" shall mean the agreement entered into between each Offtaker and the Operator in a form substantially similar to Exhibit E.
- l. "System Components" means the Generating Facility equipment and components deployed at a Site.
- m. "Renewable Energy Credit" or "REC" shall have the meaning set forth in 4 CCR 723-3-3652.
- n. "REC Incentive" shall mean the per kWhac dollar amount paid by the Utility Provider to the Operator to compensate the Operator for the associated RECs produced by the Generating Facility
- o. "Scope of Work" means the scopes of work covered in this Agreement as outlined in Exhibit A.
- p. "Site" means the real property on which a Generating Facility is located.
- q. "Site Host" means the owner of the property on which a Generating Facility is located.
- r. "Solar\*Rewards Program" shall mean the Utility Provider's program governing net metered Generated Facility interconnection and incentives.
- s. "Utility Provider" means Public Service Company of Colorado doing business as Xcel Energy.

### **General Conditions**

- a. All approvals with respect to this Agreement must be made by the Executive Director of the CASR ("Executive Director") or, the Executive Director's Designee.
- b. The Operator will be responsible for safety of all direct and subcontracted personnel under their contract, and for the safety of their work and all others in the areas of the site being worked on. The City is responsible for ensuring that the Generating Facility is accessible to technicians and for removing any hazards from the Generating Facility and surrounding worksite that could endanger onsite staff.
  - i. In the event of a situation that presents immediate and material risk to health, safety or property, McKinstry may initiate Emergency Response Services to remediate such situation prior to receiving City's approval.
- c. The Operator shall have full and free access to the equipment to provide service. If persons other than representatives of the Operator perform maintenance or repair of a unit of equipment, and as a result further repair by the Operator is required, such repairs will be made at the Operator's applicable time and material rates and terms then in effect as set forth in Exhibit B.
- d. The Operator shall coordinate site access, permissible parking areas, and hours of operation for subcontractors.
- e. The Operator shall be provided parking free of charge, unless paid parking is required by the Site Host. Should parking fees apply the costs shall be included in the approved cost proposal for on-site service work.
- f. The Operator shall protect all existing finish work from damage during maintenance. Should the Operator cause damage to any property of the Site, the Operator is responsible for curing damage.

- g. All temporary fencing, barricades, secured containers, and other forms of protection as required to protect personnel, general public and all equipment from injury or damage during maintenance activities will be the responsibility of the Operator.
- h. All work to be conducted during normal working hours unless other required working hours are explicitly requested by the City or Site Host, subject to an equitable Change Order and in accordance with the non-standard work rates provided in Exhibit B.
- i. The City shall grant Operator access to the associated DAS monitoring system and ensure all Generating Facilities have DAS functionality that allows it to communicate with Operator's O&M monitoring platform.
- j. The City agrees that the Operator can share the data and information it collects concerning the Generating Facilities with third parties for the purpose of diagnosing performance and maintenance issues.
- k. The Sentry O&M Package is limited to the following performance reporting and performance and alert monitoring capabilities.
  - i. The Operator will provide a performance report, provided on a monthly or other City-approved regular basis, outlining the Generating Facilities' performance over the course of the previous period. This report may include the following Key Performance Indicators and additional information on non-routine procedures that resulted in System Downtime.
    - i. Estimated Production, fixed weather conditions (kWh).
    - ii. Expected Production, mathematical model with measured weather conditions (kWh).
    - iii. Expected energy production using the estimated energy model, normalized for actual weather conditions.
    - iv. Actual Production (kWh) - Energy measured by the revenue grade meter installed onsite.
    - v. System Downtime expressed in percent (%) and lost energy (kWh).
  - ii. The City may choose to request a quote for performance and alert monitoring services for the Generating Facilities'. These services may include but are not limited to the following:
    - i. 24/7 automatic alarms will be set to alert any system underperformance, equipment, or communication failures.
    - ii. Remote ongoing supervision of the Generating Facility Data Acquisition System ("DAS") is included by Operator staff to manage and remedy alarms.
    - iii. If an alarm requires immediate attention the City will be contacted for dispatch approval as needed. Any service work will be handled as Corrective Maintenance, see Task 3 section 3.2 for details.

### **Task 1: Asset Management for New CASR Owned Solar Projects**

The City is developing and building new solar assets that will be owned by CASR, for which the Operator will provide asset management services as outlined below. Each Offtaker will be solely responsible for purchasing energy produced by solar assets. Operator will invoice and collect payment from produced solar energy from each Offtaker and remit payment to CASR.

- a. At the direction of CASR, Operator shall structure, negotiate, and enter into Solar Power Purchase Agreements in the role of Asset Manager with the City, through each department responsible for the utility bills at the Property. The Parties recognize that changes to the City's standard PPA form may be required, which must be approved by CASR prior to the execution of each PPA.
- b. The City shall be responsible for setting the applicable Offtaker PPA rates and escalation terms that will be memorialized in each Solar Power Purchase Agreement.
- c. The City has opted for the Operator's Sentry O&M package for new CASR owned Generating Facilities as outlined in the General Conditions.
- d. Base asset management services will be provided at the rates described in Exhibit B of this agreement.
- e. The contractor installing each new array will be responsible for ensuring the Data Acquisition System ("DAS") system is functioning and exporting data properly to the Operator.
- f. Monthly invoices to CASR for Asset Management services will be aggregated into a single package, which includes invoices and monthly reports per the contract.
- g. Operator will utilize the same, or materially similar, billing system as the Renewable Denver Community Solar program, for which the Operator is contracted by the City to manage through a separate Agreement. The billing system shall aggregate multiple invoices, if applicable, for Offtakers into a single invoice, and provides remittance back to CASR with ACH payments and a single monthly remittance report.
- i. The City shall sign any forms or agreements with the Utility Provider, as required for the Operator to perform its Scope of Work. This includes, but is not limited to Interconnection Agreements, REC Incentive agreements, and data consent forms.
- ii. The Operator shall provide all coordination and management of the Generating Facilities to maintain compliance with the applicable Xcel Energy program, such as the Solar\*Rewards Program.
- iii. The Operator shall be solely responsible for development and management of its PPA management software platform.
- iv. The Operator is responsible for PPA billing, invoicing, and collection of all PPA payments per the terms of executed Solar Power Purchase Agreements.
- v. The City may choose to assign all REC Incentive payments to the Operator and Operator shall collect all REC Incentive payments from the Utility Provider, as applicable.
- vi. The Operator shall remit to the City an amount equal to the PPA payments made to the Operator by Offtakers and REC Incentive payments from the Utility Provider, as applicable, along with a report outlining the kWh production of each Generating Facility and associated payments.

- vii. Any services not explicitly mentioned above are considered additional Operations and Maintenance Services as described in Task 3. These are excluded from Task 1 of this Exhibit.

### **Task 2: Asset Management for Existing City Owned Projects**

The Operator shall provide Asset Management services for existing City owned solar projects that will come under CASR management as outlined below.

- a. City has provided Operator with a list of existing City owned solar projects to include in its Asset Management portfolio. Services for these projects will be billed at the rates described in Exhibit B of this agreement.
- b. The City has selected the Operator's "Sentry" O&M package for these projects as outlined in the General Conditions.
- c. REC incentives, if any, will still be paid directly to the City and not be managed by Operator.
- d. Any services not explicitly mentioned are considered additional Operations and Maintenance services as described in Task 3. These are excluded from Task 2 of this Exhibit.

### **Task 3: Additional Operations and Maintenance Services as Needed**

The following services shall be billed to the City at the current time & material rates, which may be amended during the Term as set forth in the Exhibits, or at an agreed upon fixed cost at the direction of the City.

#### **3.1. Preventative Maintenance Visits**

- a. The City may request the Operator's O&M technicians perform a comprehensive Preventative Maintenance (PM) visit to a Generating Facility.
- b. The Operator shall perform services during the Preventative Maintenance visits per Exhibit C of this Agreement.
- c. Work shall be completed in four (4) hours or less, or a time frame to be determined based on the system characteristics to be agreed upon prior to commencing the work.
- d. In addition to the Preventative Maintenance actions, the Operator's technicians will document with notes and photographs and repair minor issues found during the visit.
- e. Minor maintenance issues will be completed during the Preventative Maintenance inspections so long as the work can be completed within four hours of allotted time for the scheduled inspection. The Operator shall provide the City with report outlining the work completed. within a reasonable timeframe.

#### **3.2. Corrective Maintenance**

- a. For corrective maintenance issues that will take longer than this timeframe to address, the Operator shall provide a comprehensive report to the City detailing the Preventative Maintenance visit findings, a link containing all photographs collected



on site, and a description and quote the Corrective Maintenance needs uncovered while on site. This maintenance will only be performed once the City has approved the quote and authorizes the work to proceed.

- b. When the City has approved the quote and authorized work to proceed, the Operator shall dispatch O&M technicians to address Corrective Maintenance needs. Following this dispatch, the Operator shall invoice the City and deliver a service report for the work completed. The report shall summarize the time and actions taken to diagnose and perform the Corrective Maintenance, results achieved, and any follow up actions necessary within a reasonable timeframe.
- c. Unless otherwise agreed to, the Operator agrees to provide Corrective Maintenance service availability during normal business hours, i.e., 7:00 AM to 4:30 PM, Monday through Friday, holidays excepted, and service at other than normal business hours, if contracted for, at the hourly rate and terms, including vehicle charges or special assessments, then in effect with the Operator as set forth in the Exhibits.

### **3.3. Additional Operations and Maintenance Services**

- a. OEM warranty management.
- b. Service or replacement of any System Components or Data Acquisition Systems, including installed equipment that is found to be defective as defined by the OEM warranty(s). All costs not covered by the manufacturer's warranty shall be billed to the City at current Time and Materials rates.
- c. Operator and City assume that each of these systems have DAS systems that are functioning and able to export data to Operator. If the data is not sufficient for the scope of work, the City may cause the Generating Facility installation contractor or engage the Operator to install any hardware necessary that allow the Operator to monitor the Generating Facility in accordance with the terms of this Exhibit.
- d. Emergency Calls: If any emergency service call is made at the City's request and inspection does not reveal any defect for which the Operator is responsible, the City will be liable for current time and materials charges for such service. The City agrees that there is a minimum charge of two (2) hours.
- e. Extraordinary Maintenance services.
- f. Repair services resulting from vandalism, severe weather, or damage caused by any person or the City outside the immediate control of the Operator, accident, transportation, relocation, neglect, misuse, or anything else.
- g. Purchase of replacement materials or equipment, if applicable.
- h. Module washing: The Operator may recommend, or the City may request, module cleaning to remove soiling that impacts energy production. The Operator shall

provide the City with a proposal for the module washing, which will only be performed upon written approval by the City and be billed on a per occurrence basis.

- i. Ongoing cellular, data subscription fees, or equipment upgrades for the Data Acquisition Systems
- j. In the case snow build up on the Generating Facility is creating a safety hazard or has the potential to damage the Generating Facility the City may direct the Operator to perform snow removal services. These snow removal costs will be billed to City on a per occurrence basis.
- k. Vegetation Management - Ground mounted Generating Facilities
  - i. The City may direct the Operator to maintain native vegetation (cut, trim, mow) as needed to maintain system performance and reduce fire hazard. Mowing will be billed to the City on a per occurrence basis.
  - ii. Should the City request areas to reseeded, improved, or otherwise restored, this work will be billed to the City on a per occurrence basis after approval of the Operator's proposal.
- l. If City identifies additional operations and management services are needed, a request will be made in writing to the Operator from City and the Operator will provide a quote for the work.**

### **3.4. Relocation, Deinstallation, and Reinstallation**

- a. Due to the length of time the Generating Facilities will be in operation, the City may determine that it has become necessary to replace the infrastructure underlying the Generating Facilities, such as a roof or parking lot, at a Site or relocate the Generating Facilities to a different location on a Site.
- b. In the event the City determines that replacement of infrastructure underlying the Generating Facilities, or a relocation of the Generating Facilities is necessary, the Operator shall provide a proposal to remove and reinstall or relocate the Generating Facilities as directed by the City.
- c. System reinstallation or relocation is not included in the scope of work and will be at the City's expense. The City is not obligated to accept the Operator's proposal and reserves the right to contract this work to another vendor if desired.

**Asset Management Exclusions**

- a. Maintenance or repair of any Utility Provider equipment
- b. Maintenance or repair of any City of Site Host electrical infrastructure upstream from the Generating Facility's main AC disconnect switch.
- c. Ongoing cellular and data subscription fees for Data Acquisition Systems.
- d. Repair of Site Host IT infrastructure and/or IT network(s) used by Data Acquisitions Systems.
- e. Vegetation management of all landscaping and plants or trees under and around solar canopies
- f. EV Charging System maintenance or repair
- g. EV Charging System network fees
- h. Extended warranties for equipment
- i. Collection services for past due PPA payments
- j. On site security, alarms systems, or prevention of unauthorized access to the Generating Facilities.
- k. Any ongoing general maintenance of the Site, including but not limited to keeping the areas near and under a Generating Facility clear and free of debris and trash.
- l. The Operator shall not be responsible for parking area snow plowing or removal, or ice mitigation of any kind.
- m. Generating Facility uptime or performance guarantees.

## **EXHIBIT B-1**

### **BUDGET**

#### **Summary**

The City has selected McKinstry Essention, LLC to act as its third-party solar asset manager (“Operator”). The Operator will provide preventative maintenance services, subscriber management and system revenue collection services, billing aggregation, and additional services as needed on the City’s behalf and at the City’s direction in accordance with prudent industry standards and this Exhibit.

The City anticipates cumulative annual asset management expenses under this contract of approximately \$240,000. The City’s maximum payment obligation under this contract will not exceed \$1,200,000 (“Maximum Contract Amount”).

#### **Rate Adjustments**

On no more than an annual basis, the Operator may seek approval from the City of rate adjustments to account for inflation and labor price increases. If the Operator seeks a rate adjustment, the Operator shall submit to the City evidence of its basis for seeking a rate adjustment and shall provide the City with any additional information regarding the basis for the proposed rate adjustment that the City reasonably requests. The parties generally anticipate annual price escalations of 3% or the employment cost index rate. The Parties shall in good faith negotiate the Operator’s proposed rate adjustment and any rate adjustment approved by the City shall be effective immediately or as otherwise negotiated between the Parties.

Rates are current as of the Effective Date of this Agreement.

#### **Invoicing**

Monthly invoices to CASR for Asset Management services will be aggregated into a single package, which includes invoices and monthly reports per the contract.

- Upfront/Origination costs will include a line item for each project and shall be billed on the monthly invoice following the successful incorporation of new project(s) into the asset management portfolio.
- Annual Costs will be collected via the monthly invoice package and include a line item for each active project under management.

**Task 1: Asset Management for New CASR Owned Solar Projects**

The services described in Exhibit A of this agreement will be billed on a per project basis or per capacity basis as indicated below. As each project is added to the asset management portfolio, it will incur an upfront/origination cost followed by ongoing annual asset management fees.

<b>Upfront/Origination Cost</b>	<b>Billing approach</b>	<b>Unit cost</b>
Invoicing and Billing System	Cost per project	\$3,119
McKinstry Services	Cost per project	\$4,179
<b>Total</b>	Cost per project	<b>\$7,298</b>

<b>Annual Costs</b>	<b>Billing approach</b>	<b>Unit cost</b>
Invoicing and Billing Software System	Cost per project	\$3,833
McKinstry Asset Management Services	Cost per project	\$1,817
Operations and Maintenance	Cost per kW-dc	See Rates Section Below

**Task 2: Asset Management for Existing City Owned Projects**

The City has three existing City owned solar PV projects for which the Operator will provide Asset Management services as outlined in Exhibit A. The services will be billed on a per project basis or per capacity basis as indicated below. Each project will incur an upfront/origination cost followed by ongoing annual asset management fees. Should the City wish to add other existing projects to the Operator's scope, the Operator shall provide a cost proposal for each project.

<b>City Owned Existing Systems</b>		
Project Type	Project #	Size (kWdc)
Rooftop - Ballasted	1	30.0
Rooftop - Pitched/Flush	2	154.0
Rooftop - Ballasted	3	70.0
	<b>Total</b>	<b>254.0</b>

<b>Upfront/Origination Cost</b>	<b>Billing approach</b>	<b>Unit cost</b>
Upfront Costs – Existing projects	Cost per project	\$818

<b>Annual Costs</b>				
Project #	1	2	3	
System Size - kWdc	30.0	154.0	70.0	
McKinstry Services	\$ 228	\$ 228	\$ 228	
Sentry O&M Package	\$ 636.80	\$ 1,171.30	\$ 807.91	
<b>Total Annual Cost</b>	<b>\$ 894.80</b>	<b>\$ 1,399.30</b>	<b>\$ 1,035.91</b>	

**Task 3: Additional Operations and Maintenance Services as Needed**

Additional services requested and approved by the City, including but not limited to preventative and corrective maintenance services, shall be billed to the City at the current time & material rates, which may be amended during the Term as set forth in the Exhibits, or at an agreed upon fixed cost.

**Rates****Operations and Maintenance Sentry Package**

The annual O&M rates for the Sentry package are dependent on the kWdc size of the solar PV system. The chart below represents the annual cost for various system sizes for rooftop, canopy, and tracker system types. For each new project the Operator will provide the City a fixed annual cost, which will be generally be in line with this pricing matrix, adjusted according to the system size. Unique site characteristics or custom installation types (i.e. agrivoltaics, floating solar, etc.) may result in increased costs.

<b>Annual O&amp;M Fee – Breakdown per Project Size</b>		
<b>System Size - kWdc</b>	<b>Sentry O&amp;M Package</b>	<b>Sentry Cost per kWdc</b>
25	\$627	\$25.08
100	\$957	\$9.57
250	\$1,871	\$7.48
500	\$2,805	\$5.61
1,000	\$4,862	\$4.86

**Hourly Labor Rates**

<b>Staff</b>	<b>Standard Rate (\$/hr)</b>
Asset Manager Leader	\$161.50
Asset Manager Project Manager	\$129.78
Asset Manager Administrator	\$86.52
Solar Technician	\$120.10
Lead Solar Technician/ Licensed Electrician	\$156.20
Medium Voltage Qualified Electrician	\$198.00
Non-solar Laborer	\$96.80

**Holiday, Weekend and Non-Standard Work Hours**

In the event emergency or prioritized response is required on holidays, weekends, or outside of normal business hours, work shall be compensated at the labor rates adjusted by the following factors:

- Weekend and Holiday Factor: [1.5x]
- Non-Standard Business Hours Factor: [1.25x]

**Materials**

Any and all equipment or materials rented or purchased by the Operator that are required to maintain or repair the Generating Facilities will be billed to the City at the following rates:

- 20% markup for values up to \$10,000
- 15% markup for values between \$10,000 and \$50,000
- 10% markup for values above \$50,000

**Billing Aggregation**

As of May 2020, the City has 17 PPAs with 3 owners and 39 CSG subscriptions from 2 vendors, resulting in 40 distinct invoices. While this Agreement does not include billing aggregation services related to these existing projects, they may be added through a Charge Order in the future. Prior to doing so the City and Operator must agree to mutually acceptable terms and conditions.