

## ASSET MANAGEMENT AGREEMENT

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

**WHEREAS**, the City owns and may lease, license, or obtain a permit to use certain real property and improvements (“**City Properties**”) where the City may install and operate electricity grid-connected photovoltaic, solar power plants owned by the City (individually, a “**Generating Facility**,” and collectively, the “**Generating Facilities**”); and

**WHEREAS**, the City has determined that it is desirable and appropriate that the Generating Facilities be operated and maintained by the Operator under the continuing jurisdiction, supervision, and control of the City, and that such use is compatible and appropriate within the uses allowed for the City Properties, in order to put the same to full, productive use and for the benefit of the general public; and

**WHEREAS**, the Generating Facilities will be constructed on property that has been financed by tax-exempt bond or lease transactions subject to regulation under the Internal Revenue Code and the cost of acquiring and constructing the Generating Facilities will be paid from sources other than Bonds (i.e., will not be tax-exempt financed). The Parties agree therefore that this Agreement must be and has been approved by Bond Counsel for the Bond and by Special Counsel for the COPs; and

**WHEREAS**, the City also deems it appropriate and necessary in the public interest for the Operator to enter into Power Purchase Agreements for the Generating Facilities with the electric customers receiving the power generated by the Generating Facilities in order to put the same to full, productive use and for the benefit of the general public; and

**WHEREAS**, the Operator hereby binds itself, subject to the terms and provisions of this Agreement, to perform all the terms and conditions of this Agreement.

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

**1. COORDINATION AND LIAISON:** The Operator shall fully coordinate the performance of all of its obligations under this Agreement with the Executive Director of the Office of Climate Action, Sustainability, and Resiliency (“**Executive Director**”) or, the Executive Director’s Designee.

**2. SERVICES TO BE PERFORMED:**

a. As the Executive Director directs, the Operator shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth in the Agreement to the City's reasonable satisfaction.

b. The Operator represents and warrants that it is ready, willing, and able to perform the services required by this Agreement.

c. The Operator shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in and in accordance with the terms of the Agreement.

3. **TERM:** This Agreement will commence upon execution by all required signatories and will expire **September 1, 2027**, (the "**Term**"). The term of this Agreement may be extended by mutual agreement under the same term and conditions for up to four (4) additional five (5) year terms by a written amendment to this Agreement executed by the Parties. Subject to the Executive Director's prior written authorization, the Operator shall complete any work in progress as of the expiration date of the Agreement or any extension thereto, and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.

4. **COMPENSATION AND PAYMENT:**

a. **City Expenditures:**

(1) **Fee Schedule:** The City shall pay and the Operator shall accept as the sole compensation for services rendered and costs incurred under the Agreement the amounts set forth in **Exhibit B**. Amounts billed may not exceed the schedules set forth in **Exhibit B**.

(2) **Reimbursable Expenses:** Reimbursable expenses are only permitted to the extent described in each Exhibit.

(3) **Invoicing:** The Operator shall provide the City with a monthly invoice with a level of detail reasonably acceptable to the City including all supporting documentation reasonably required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C. applies to invoicing and payment under this Agreement.

(4) **Maximum Contract Amount:**

(a) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **ONE MILLION TWO HUNDRED THOUSAND DOLLARS AND NO CENTS (\$1,200,000.00)** (the "**Maximum Contract Amount**"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by the Operator beyond that specifically described in the Exhibits. Any services performed beyond those in the Exhibits are performed at the Operator's risk and without authorization under the Agreement. The Maximum Contract Amount may be changed by a mutual written agreement executed by the Parties.

(b) The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

b. **City Revenue:** On a monthly basis, the Operator shall remit to the City an amount equal to the PPA payments made to the Operator by Generating Facility recipients (“**Generating Facility Revenue**”) and received by the 5th day of the previous month, along with a report outlining the kWh production of each Generating Facility and associated payments. The report shall be in a form acceptable to the City.

**5. ACCESS TO CITY PROPERTIES:**

a. Excepting Properties located on Denver International Airport land managed by the City’s Department of Aviation (“**DEN**”), the City hereby authorizes the Operator to access the City Properties for the purposes of operating and maintaining the Generating Facilities and providing any related services as authorized by the Executive Director. Notwithstanding the previous sentence, any access to and services performed on land managed, operated, and controlled by the City’s Department of Parks and Recreation (“**DPR**”) may require a Temporary Construction Access Permit (“**TCAP**”). The Operator shall coordinate its access to the City Properties with the Executive Director, and the Operator’s access to the Properties shall be subject to such reasonable rules, including DPR Rules and Regulations, as the City may adopt.

b. It is understood that the use of the City Properties is or may be restricted by Bond and COP Ordinances; existing zoning code designation of the City; limitations and restrictions regarding DPR-operated park land under City Charter, ordinances, and DPR Rules and Regulations; existing or future agreements; and by all applicable rules, regulations, statutes or ordinances promulgated by any federal, state or municipal agency having jurisdiction over the Properties.

c. For DEN Properties, the Operator expressly acknowledges that the access to and use of DEN land is not governed by this Agreement and must be authorized through a separate permit with the City by and on behalf of its Department of Aviation. A permit for Generating Facilities on DEN Properties must be negotiated with the City through DEN. Activities on DEN Properties will be governed by the following:

- (1) terms and conditions of the permit authorizing construction, operation, and maintenance of the Generating Facilities and/or EV Charging Equipment, as applicable;
- (2) DEN’s or the Federal Aviation Administration’s (“**FAA**”) rules, regulations, and policies applicable to the Operator’s activities on DEN Properties;

- (3) DEN's design, construction, and development guidelines; and
- (4) all security requirements imposed by DEN or any state or federal agency with jurisdiction over DEN security.

The Operator further expressly acknowledges and understands that a market rate based permit fee will be charged, and paid for by the City, for use of DEN Properties, and that any license(s) will be subject to FAA approval. To the extent the terms of such permit conflict with the terms of this Agreement, the permit shall control.

d. The Operator expressly acknowledges that the access to and use of any Properties leased or licensed by the City and owned by a third party will be governed by the terms and conditions of the lease or license agreement authorizing the construction, operation, and maintenance of Generating Facilities applicable to each specific Property. To the extent the terms or conditions of such lease or license agreement conflict with the terms or conditions of this Agreement, the applicable lease or license agreement shall control.

e. The City represents that notwithstanding the stated limitations of this Section 6, the City and/or third parties under direction or control of the City will not take any action in relation to the Properties that materially limits the ability of the Operator to perform its work under this Agreement.

## **6. BACKGROUND CHECKS:**

a. As applicable, the Operator, at its expense, must conduct a background check for each of its employees, as well as for the employees of its subcontractors, who will provide services to the City at a Property where enhanced security is required. The term "employee" for the purpose of this requirement, includes anyone who is providing services for the City under this Agreement. Background checks shall include all convictions for the last seven years and may include additional convictions beyond seven years when permitted and/or required by law. Background checks are to be conducted through an independent background check vendor and must include the following:

- (1) Social Security Number Trace;
- (2) Federal Criminal Records (includes wants, warrants, arrests, convictions, and incarcerations);
- (3) Colorado Criminal Records (includes wants, warrants, arrests, convictions, and incarcerations);
- (4) Criminal Records from other States if the employee disclosed, or the background check identifies, that the employee lived in another state in the last seven years (includes wants, warrants, arrests, convictions, and incarcerations); and

(5) National Sexual Offender Registry Search.

b. In addition to the foregoing background check, access to certain Properties may require employees to pass a National Crime Information Center (“NCIC”) background check. If applicable, these background checks will be administered by the City and will be at no cost to the Operator. If a NCIC background check is required, the Operator’s employees will be required to provide their social security numbers to the City and will be provided entrance cards for each facility. The Operator will not be permitted to share cards to provide services. The background check(s) must be conducted successfully prior to initial access and/or involvement by employees. Employees who separate from the Operator’s employment must undergo another background check prior to renewed access and/or involvement in providing services to the City. The City also has the ability to audit the Operator’s background check process, to ensure compliance with City standards, at any time. Additionally, all employees are required to self-disclose to the Operator any criminal charges and convictions and *nolo contendere* pleas (no contest pleas) that occur while providing services to the City within three business days of the conviction, charge, or plea. The Operator is required to inform the City of any criminal charges or convictions or *nolo contendere* pleas (no contest pleas) that arise while an employee is working pursuant to this Agreement. The Operator must inform the City within one business day of the Operator having knowledge of the charge, conviction, or plea. The City will determine, in its sole discretion, whether the employee will remain working pursuant to this Agreement.

c. Failure by the Operator to comply with the terms of this Section may result in the termination of the Agreement.

7. **DEFAULTS AND REMEDIES:**

a. **Operator Default:** The following events are defaults with respect to the Operator (“**Operator Default**”):

- (1) The Operator fails to pay the City any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from the City of such past due amount;
- (2) The Operator breaches any material term of this Agreement and either (a) the Operator fails to cure the breach within thirty (30) days after receipt of written notice from the City, or (b) the Operator fails to commence and pursue a cure within a reasonable time if a period greater than thirty (30) days is necessary to cure the Operator Default.

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

c. **City Default:** The following events are defaults with respect to the City (“**City Default**”):

(1) The City breaches any material term of this Agreement and either (a) the City fails to cure the breach within thirty (30) days after receipt of written notice from the Operator, or (b) the City fails to commence and pursue a cure within a reasonable time if a period greater than thirty (30) days is necessary to cure the City Default.

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

## 8. **TERMINATION:**

a. Each Party has the right to terminate in accordance with the default provisions set forth in Section 7 of this Agreement.

b. **Termination by the City:**

(1) The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the Operator. However, nothing gives the Operator the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Executive Director.

(2) Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Operator or any of its 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 Operator’s business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

(3) Upon termination of the Agreement, with or without cause, the Operator shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

(4) If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Operator’s possession, custody, or control by whatever method the City deems expedient. The Operator shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and

materials are the property of the City. The Operator shall mark all copies of work product that are incomplete at the time of termination “DRAFT-INCOMPLETE”.

(5) If the Agreement is terminated, the Operator shall, at the City’s request, use commercially reasonable efforts to assign its obligations under this Agreement to a replacement operator, and shall assign its obligations under all agreements entered into by the Operator on the City’s behalf pursuant to this Agreement, including but not limited to the Solar Power Purchase Agreements, to a replacement operator or the City as directed by the City. The City shall use commercially reasonable efforts to effectuate and expedite such assignment.

**b. Termination by the Operator:**

(1) The Operator may terminate for convenience upon one (1) years’ prior written notice to the City. During the one-year termination notice period, the Operator shall, at the City’s request, take all steps commercially reasonable to assist the City in procuring a replacement operator. The City shall have the right to recover from the Operator all direct costs incurred by the City associated with procuring a replacement operator, including but not limited to City staff time, which will be determined by salary and benefits of City employees and hourly rates of consultants; the City shall provide the Operator with an invoice for such costs at least thirty (30) days prior to termination and the Operator shall pay the invoice upon termination. The amount payable by Operator to City pursuant to the foregoing provisions of this paragraph shall in no case exceed \$50,000.00 dollars in the aggregate.

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

**10. WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Operator. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

## 11. INSURANCE:

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

b. **Proof of Insurance:** The Operator may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. The Operator certifies that the certificate of insurance attached as **Exhibit D**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the certificate of insurance. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of the Operator’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. **Additional Insureds:** For Commercial General Liability, Business Auto Liability, Professional Liability, and Excess Liability/Umbrella (if required), the Operator and suboperator’s insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. **Waiver of Subrogation:** For all coverages required under this Agreement, with the exception of Professional Liability, the Operator’s insurer shall waive subrogation rights against the City.

e. **Subcontractors and Subconsultants:** The Operator shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain



coverage as approved by the Operator and appropriate to their respective primary business risks considering the nature and scope of services provided.

**f. Workers' Compensation and Employer's Liability Insurance:** The Operator shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

**g. Commercial General Liability:** The Operator shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

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

**i. Professional Liability (Errors & Omissions):** Operator shall maintain minimum limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. The policy shall be kept in force, or a Tail policy placed, for three (3) years for all contracts except construction contracts for which the policy or Tail shall be kept in place for eight (8) years.

## **12. DEFENSE AND INDEMNIFICATION:**

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

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

**c.** Operator will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on

behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

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

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

**13. GOVERNMENTAL IMMUNITY:** The Operator understands and agrees that the City, its officers, officials and employees, are relying on and do not waive or intend to waive by any provisions of this Agreement the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101–120, or otherwise available to the City, its officers, officials and employees.

**14. PAYMENT OF CITY MINIMUM WAGE:** The Operator shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Operator expressly acknowledges that the Operator is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by the Operator, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

**15. PAYMENT OF CITY PREVAILING WAGE:** The Operator shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, Sections 20-76 through 20-79, D.R.M.C. including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the date the bid or request for proposal was advertised. In the event a request for bids, or a request for proposal, was not advertised, the Operator shall pay every covered worker no less than the prevailing wages and fringe benefits in effect on the date funds for the contract were encumbered. Prevailing wage and fringe rates will adjust on the yearly anniversary of the actual date of bid or proposal issuance, if applicable, or the date of the written encumbrance if no bid/proposal issuance date is applicable. Unless expressly provided for in this Agreement, the Operator will receive no additional compensation for increases in prevailing wages or fringe benefits. The Operator shall provide the Auditor with a list of all subcontractors providing any services under the contract. The Operator shall provide the Auditor with electronically-certified payroll records for all covered workers employed under the contract. The Operator shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing [auditor@denvergov.org](mailto:auditor@denvergov.org). If the Operator fails to pay workers as required by the Prevailing Wage

Ordinance, the Operator will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if the Operator fails to pay required wages and fringe benefits.

**16. TAXES, CHARGES AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Operator 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. The Operator shall exclude the amount of any applicable federal excise or manufacturers' taxes from the Cost Proposal.

**17. ASSIGNMENT; SUBCONTRACTING:** The Operator shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Executive Director's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment or subcontracting without such consent will be ineffective and void and will be cause for termination of this Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, and such consent shall not unreasonably be withheld. The Executive Director has sole and absolute discretion to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any unauthorized subcontracting or assignment: (i) the Operator shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any subcontractor or assign.

**18. INUREMENT:** The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

**19. NO THIRD-PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Operator receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

**20. NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Operator 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 Denver Revised Municipal Code.

**21. SEVERABILITY:** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

**22. CONFLICT OF INTEREST:**

a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Operator 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.

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

**23. NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to the Operator at the address first above written and to General Counsel, McKinstry, 5005 3<sup>rd</sup> Ave. S., Seattle, WA 98134, and if to the City at:

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

With a copy of any such notice to:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**24. NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT:**

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "**Certification Ordinance**").

b. The Operator certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(3) It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Operator that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Operator shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

(6) It will comply with a reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. § 20-90.3.

c. The Operator is liable for any violations as provided in the Certification Ordinance. If the Operator violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, the Operator shall be liable for actual and consequential damages to the City. Any termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying the Operator from submitting bids or proposals for future contracts with the City.

**25. DISPUTES:** All disputes between the City and the Operator arising out of or regarding the Agreement will first attempted to be resolved through the use of good faith and reasonable diligent efforts. In the event such efforts to resolve such disputes are not successful within thirty (30) days' notice of such dispute from one Party to another, the dispute will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-

106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Agreement.

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

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

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

**29. LEGAL AUTHORITY:** The Operator represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of the Operator represents and warrants that he has been fully authorized by the Operator to execute the Agreement on behalf of the Operator and to validly and legally bind the Operator to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either the Operator or the person signing the Agreement to enter into the Agreement.

**30. INDEPENDENT CONTRACTOR:** The Operator 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 Operator is a partner, joint venturer, agent or representative of the City. Neither Party shall represent to others that one Party is a partner, joint venturer, agent or representative of, or otherwise associated with, the other Party with respect to the rights and obligations set forth in this Agreement. The Operator lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the DRMC.

**31. NO CONSTRUCTION AGAINST DRAFTING PARTY:** The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

**32. ORDER OF PRECEDENCE:** In the event of any conflicts between the language of the Agreement and the Exhibits, the language of the Agreement controls. Notwithstanding the foregoing, each Exhibit controls to the extent of scope, pricing, and time aspects of the services specified in such Exhibit, but not to the extent of legal terms and conditions (if any) specified in such Exhibit.

**33. INTELLECTUAL PROPERTY RIGHTS:** The City and the Operator intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Operator solely pursuant to this Agreement and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, “**Materials**”), shall belong to the City. The Operator shall disclose all such items to the City and shall assign such rights over to the City upon completion of the Project. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a “work made for hire” and all City ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” the Operator (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity. The City grants to the Operator a perpetual, irrevocable, royalty-free, fully paid up, non-exclusive license to use Materials, to the extent such Materials do not include Proprietary Data as defined herein, for any purpose related to this Agreement, all related agreements, and any future solar photovoltaic project.

**34. SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Operator’s obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**35. ADVERTISING AND PUBLIC DISCLOSURE:** The Operator shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Operator’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 Operator 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.

**36. CONFIDENTIAL INFORMATION:**

**a. City Information:** The Operator acknowledges and accepts that, in performance of all work under the terms of this Agreement, the Operator may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. The Operator agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to the Operator shall be held in confidence and used only in the performance of its obligations under this Agreement. The Operator shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent Operator would to protect its own proprietary or confidential data. “**Proprietary Data**” shall mean any materials or information which may be designated or marked “Proprietary” or “Confidential”, or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to the Operator by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

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

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

**39. CITY EXECUTION OF AGREEMENT:** The 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.

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

**41. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Operator shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.



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

**List of Exhibits**

*The following exhibits are attached and incorporated by reference herein.*

**Exhibit A** – Scope of Work.

**Exhibit B** – Fee Schedule.

**Exhibit C** – Preventative Maintenance Checklist.

**Exhibit D** – Certificate of Insurance.

**Exhibit E** – Power Purchase Agreement Template.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGES FOLLOW]**

**Contract Control Number:** CASR-202264633-00  
**Contractor Name:** MCKINSTRY ESSENTION, LLC

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

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

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

CASR-202264633-00  
MCKINSTRY ESSENTION, LLC

By:  EE6793EEC9FB47E...

Name: Mikeal Porter  
(please print)

Title: Vice President  
(please print)

ATTEST: [if required]

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

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

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

## **EXHIBIT A**

### **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.

### **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**

### **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.

#### **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	\$3,000
McKinstry Services	Cost per project	\$3,938
<b>Total</b>	Cost per project	<b>\$6,938</b>

<b>Annual Costs</b>	<b>Billing approach</b>	<b>Unit cost</b>
Invoicing and Billing Software System	Cost per project	\$3,686
McKinstry Asset Management Services	Cost per project	\$1,718
Operations and Maintenance	Cost per kWdc	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	\$770

<b>Annual Costs</b>				
	Project #	1	2	3
System Size - kWdc		30.0	154.0	70.0
McKinstry Services		\$ 224	\$ 224	\$ 224
Sentry O&M Package		\$ 650	\$ 1,194	\$ 825
<b>Total Annual Cost</b>		<b>\$ 904</b>	<b>\$ 1,418</b>	<b>\$ 1,049</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	\$156.80
Asset Manager Project Manager	\$126.00
Asset Manager Administrator	\$84.00
Solar Technician	\$116.60
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.

## **EXHIBIT C**

### **PREVENTATIVE MAINTENANCE INSPECTION CHECKLIST**

#### **Grounds, Roof and Security**

- Site is secure with locks to all entry points working (if applicable).
- Grounds: Weeds or other vegetation is not causing shading issues.
- Fencing: All fencing intact, posts/footers in good condition. No rust or erosion present.
- Roof: No signs of abrasion or damage to the roofing membrane by the racking system.
- Roof Penetrations: All roof penetrations are sealed appropriately without any damage or potential for leaks.
- Roof Drainage: Racking system is allowing for proper drainage. Racking system is not causing 'dams' and all roof drains are free from debris.
- Pests: No signs of pests/rodents that could potentially infest and damage the system.
- System diagram is displayed on-site in an accessible location as per CEC requirement.
- Emergency shutdown protocol is displayed on-site in an accessible location.
- Site map is easily accessible, legible and firmly secured in place.

#### **Inverters**

- Inverters have been securely fastened to their mounting system.
- Inverter conductor termination torque marks checked. Retorque if necessary.
- Inverter wires properly color coded and labeled.
- Inverter wires protected from damage.
- Inverter free of moisture, debris, rust, damage.
- Inverter signage is legible and firmly in place.
- Inverter fuse ratings match construction drawings and are in place, checked for blown fuses.
- Inverter seals have been checked.
- Inverters have proper equipment grounding conductor and the conductor is intact.
- Inverter arc shields are in place.
- Inverter fan air intake cleaned from any dust or debris. Filters replaced (if applicable).
- LCD screen is legible and clean.
- Inverter is not displaying any active fault codes.
- All inverter conduit seals are intact.
- Any other manufacturer requirements from installation manual or warranty guideline.
- Inverter has a means of disconnect on the DC & AC side. Disconnects are lockable.
- Max Power Point Tracker (MPPTs) are balanced as to not cause overloading and clipping on a single MPPT.

### **AC System (Disconnects, Panelboards, Conduit, Transformers, etc)**

- Isolation and switching devices are connected such that PV installation is wired to the "load" side and the public supply to the "source" side.
- Equipment enclosures are secure and free from debris, dirt or moisture.
- Equipment has proper clearances are required by code.
- Equipment signage is legible and firmly in place.
- Equipment is grounded and bonded properly.
- All conduit penetrations, supports, fittings, gaskets and expansion joints are intact and meet code requirements.
- Equipment is free of any signs of arcing.
- All conductor termination torque marks are checked. Retorque if necessary.
- All conductors are routed properly, protected from damage and color coded as required by code.
- All switches and fuses have been tested to ensure proper function.

### **DC System (including Rapid Shutdown Devices)**

- DC signage is firmly attached and legible.
- DC home runs are color coded and labeled.
- DC wires are protected from sharp edges, exposure to sun.
- DC wire management is neat and workmanlike, no tight bending radii, drip loops etc.
- DC wire management clips, ties, etc are intact and not at risk of failing.
- DC cables are adequately protected.
- High voltage DC cabling ( $> 120$  V) is in trenching / not accessible
- PV rated cables have been used as required per plan and rated for proper voltage (1000/2000V).
- DC module connectors mated together are of the same type and from the same manufacturer.
- Where a Generating Facility has a direct connection to earth on the DC side (functional earth), a functional earth fault interrupter is provided to the requirements of IEC 60364.
- DC combiners are secure, clean and have proper clearance.
- DC combiners have been grounded.
- DC combiner conductor termination torque marks checked.
- DC combiner wire labels are legible and color coded.
- DC combiner wires protected from damage.
- DC combiner conduit penetrations, fittings, seals and support are in good condition.
- DC fuse ratings match construction drawings and are in place, checked for blown fuses.
- DC Rapid Shutdown Devices leads are in good condition and all units fully functional.



## **Modules**

- No shading concerns (now or in future).
- No soiling concerns (now or in future).
- No signs of damage, delamination or discoloring.
- No signs of scratches, marks or burns on the backsheets.
- No signs of damaged leads or connectors.
- No signs of damage or outages for under module lighting at solar canopies.

## **Racking**

- No signs of damage to racking structural integrity (rust, frost heave, ground movement, vandalism, etc.)
- Roof penetrations are sealed without signs of ponding (if applicable).
- Grounding and bonding are intact. Verify with continuity test.
- Torque marks are in place and properly tightened according to manufacturer guidelines.
- No signs of damage from animals, pests or rodents.
- Ballast blocks, slip sheets and wind deflectors are intact and show no signs of immediate failure.

## **Single Axis Trackers**

- No signs of damage to structural integrity (rust, frost heave, ground movement, vandalism, etc.).
- Arrays are in the correct positional orientations and synchronized.
- Specific manufacturer maintenance tasks are completed for tracker motors and gear housing.
- Conduit and homeruns between gear housing/moving parts are in good condition.
- Ground braids between moveable parts are in good condition.
- Shock absorbers are in good condition (no signs of leaking, broken seals, etc.).
- Torque tubes at slew ring shaft are in good condition (no signs of cracking, screws have proper torque, etc.).
- All sensors for tracker movement are functional.
- Correct date and time in tracker Programmable Logic Controllers (PLCs).

## **DAS**

- DAS Enclosure is free of dirt, debris or moisture.
- DAS System is properly communicating and all components functional.
- Wind and irradiance sensor are properly oriented and functional.
- Ambient temperature sensor is properly installed and functional.
- Cell temperature sensor is properly installed and functional.
- Compare temperature sensor readings on DAS platform reading with handheld readings.

**EXHIBIT D**

**CERTIFICATE OF INSURANCE**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/21/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Hub International Northwest LLC PO Box 3018 Bothell, WA 98041	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): <b>(425) 489-4500</b>	<b>FAX (A/C, No):</b> <b>(425) 485-8489</b>	
	<b>E-MAIL ADDRESS:</b> <b>now.info@hubinternational.com</b>		
	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURED</b>  McKinstry Essention, LLC 5005 3rd Ave South Seattle, WA 98134	<b>INSURER A:</b> <b>The Travelers Indemnity Company</b>		<b>25658</b>
	<b>INSURER B:</b> <b>Travelers Property Casualty Company of America</b>		<b>25674</b>
	<b>INSURER C:</b> <b>Standard Fire Insurance Company</b>		<b>19070</b>
	<b>INSURER D:</b> <b>Steadfast Insurance Company</b>		<b>26387</b>
	<b>INSURER E:</b>		
	<b>INSURER F:</b>		

**COVERAGES**
**CERTIFICATE NUMBER:**
**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	X	X	VTC2K-CO-5643B901-IND-22	1/31/2022	1/31/2023	EACH OCCURRENCE	\$ <b>2,000,000</b>
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ <b>300,000</b>
	<input checked="" type="checkbox"/> <b>WA Stop Gap</b>						MED EXP (Any one person)	\$ <b>10,000</b>
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PERSONAL & ADV INJURY	\$ <b>2,000,000</b>
	OTHER:						GENERAL AGGREGATE	\$ <b>4,000,000</b>
							PRODUCTS - COMP/OP AGG	\$ <b>4,000,000</b>
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY			VTC2J-CAP-5643B913-TIL-22	1/31/2022	1/31/2023	COMBINED SINGLE LIMIT (Ea accident)	\$ <b>2,000,000</b>
	ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/>	SCHEDULED AUTOS <input type="checkbox"/>	BODILY INJURY (Per person)				\$	
	HIRED AUTOS ONLY <input type="checkbox"/>	NON-OWNED AUTOS ONLY <input type="checkbox"/>	BODILY INJURY (Per accident)				\$	
			PROPERTY DAMAGE (Per accident)				\$	
							\$	
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR						EACH OCCURRENCE	\$
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE	\$
	DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/>							\$
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			UB-9K158609-22-25-G	10/1/2022	10/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	\$ <b>1,000,000</b>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/>	Y/N <input checked="" type="checkbox"/>	N/A				E.L. EACH ACCIDENT	\$ <b>1,000,000</b>
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$ <b>1,000,000</b>
							E.L. DISEASE - POLICY LIMIT	\$ <b>1,000,000</b>
D	<input type="checkbox"/> PROFESSIONAL LIAB			EOC6738794-09	1/31/2022	1/31/2023	PER CLAIM/AGG:	\$ <b>1,000,000</b>

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

City and County of Denver are included as Additional Insured, coverage is primary and non-contributory and waiver of subrogation applies per the attached forms/endorsements.

**CERTIFICATE HOLDER****CANCELLATION**
 City and County of Denver  
 201 W Colfax Ave  
 Denver, CO 80202

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

 AUTHORIZED REPRESENTATIVE

## EXHIBIT E

### POWER PURCHASE AGREEMENT TEMPLATE

#### SOLAR POWER PURCHASE AGREEMENT

**THIS SOLAR POWER PURCHASE AGREEMENT** (this “**Agreement**”) is made and entered into as of the date set forth on the signature page below by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, on behalf of its Department of \_\_\_\_\_ (“**City**”), and McKinstry Essention, a Washington limited liability company (“**Power Provider**”), each a “**Party**” and collectively the “**Parties.**”

**WHEREAS**, the City, in the exercise of its lawful authority, has constructed, developed, and equipped the electricity grid-connected photovoltaic, solar power plants with a total generating capacity rated at approximately \_\_\_\_\_ kWdc/ \_\_\_\_\_ kWac (the “**Generating Facility**”) located at \_\_\_\_\_ (the “**Property**”), in Denver, Colorado, as further depicted in **EXHIBIT A**;

[**WHEREAS**, the Generating Facility is located on property that has been financed by tax-exempt bond or lease transactions subject to regulation under the Internal Revenue Code and the cost of acquiring and constructing the Generating Facilities will be paid from sources other than Bonds (i.e., will not be tax-exempt financed). The Parties agree therefore that this Agreement must be and has been approved by Bond Counsel for the Bond and by Special Counsel for the COPs; and]

**WHEREAS**, the City, through its Office of Climate Action, Sustainability, and Resiliency (“**CASR**”) has entered into that certain Asset Management Agreement with the Power Provider no. \_\_\_\_\_ dated \_\_\_\_\_ (“**Asset Management Agreement**”) to operate and maintain solar generating facilities on property that may be owned, leased, licensed, or permitted to use by the City, including at the Property;

**WHEREAS**, the City, through its Department of \_\_\_\_\_, desires to purchase from Power Provider and Power Provider desires to sell to the City the entire energy output of the Generating Facility;

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

1. **LINE OF AUTHORITY**: The City’s Executive Director of \_\_\_\_\_, his/her designee or his/her successor in function (hereinafter referred to as the “**Executive Director**”) authorizes and directs all work performed under this Agreement. Until otherwise notified by the Executive Director, the City’s Energy Manager is designated as the authorized representative of the Executive Director. Administrative reports, memoranda, correspondence and other submittals required of Power Provider shall be processed in accordance with the Executive Director’s directions.

2. **DEFINITIONS**:

A. “**Bankruptcy Event**” means, with respect to a Party, that either: (i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or

readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or (ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding up or the composition or readjustment of debts, or (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

**B.** “**D.R.M.C.**” means the Denver Revised Municipal Code.

**C.** “**Energy Output**” means the total quantity of all actual net energy generated by the Generating Facility (measured in kWhac) in any given period of time. Energy Output does not include the RECs.

**D.** “**kWhac**” means kilowatt-hour alternating current of electricity.

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

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

**G.** “**Site**” means the real property listed in **EXHIBIT A** on which the Generating Facility is located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the operation and maintenance of the Generating Facility.

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

### **3. OPERATION OF THE GENERATING FACILITY:**

**A.** Power Provider, pursuant to its obligations under the Asset Management Agreement, shall be solely responsible for operation and maintenance of the Generating Facility in compliance with all laws, regulations, and governmental entities, and shall, at all times during the term of this Agreement, maintain the Generating Facility in good operating condition.

**B.** Power Provider shall use commercially reasonable efforts to prevent activities associated with operation and maintenance of the Generating Facility from disrupting or interfering with the City’s operation of the Site. The Parties shall cooperate in a reasonable manner to make the Site available for the operation and maintenance of the Generating Facility.

4. **TERM:** This Agreement will commence upon execution by all required signatories and will expire five (5) years thereafter (the “**Term**”). The term of this Agreement may be extended by mutual agreement under the same term and conditions for up to four (4) additional five (5) year terms by a written amendment to this Agreement executed by the Parties. Subject to the Executive Director’s prior written authorization, the Operator shall complete any work in progress as of the expiration date of the Agreement or any extension thereto, and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.

5. **PAYMENT OBLIGATIONS:**

A. **Purchase and Sale of Power.** Beginning on the date the Generating Facility is commercially operational, and continuing for the Term of this Agreement, the City shall purchase and accept delivery from Power Provider at the purchase price set forth in Section 5.B below, and Power Provider shall sell and deliver to Purchaser the entire Energy Output (in such amount of output as the Generating Facility produces from time to time). Purchaser shall not resell any of the Energy Output except for any net-metering.

B. **Purchase Price.** On a monthly basis during the Term, the City shall pay Power Provider an amount equal to the Energy Output during the applicable production month multiplied by the Purchase Price per kWhac (pursuant to **EXHIBIT B**). Such amount shall be paid in accordance with the terms of this Section 5.

C. **Maximum Contract Amount.**

(1) Any other provision of this Agreement notwithstanding, in no event shall the City’s payment obligation for the Agreement exceed        **DOLLARS AND NO CENTS (\$      .00)** (the “**Maximum Contract Amount**”), unless this Agreement is amended to increase such amount.

(2) The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple fiscal year direct or indirect debt or financial obligation of the City.

D. **Invoicing.** Power Provider shall deliver to the City monthly invoices, no later than thirty (30) days after the last day of the production month, stating the amount equal to the Generating Facility’s Energy Output for the production month in kWhac. The invoice shall be in form satisfactory to the City. The Parties agree that the Executive Director and the Chief Financial Officer of the Department of Finance may from time to time change the format and content of the monthly invoice to be submitted by Power Provider. The City’s Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under the Agreement.

6. **RECS:** The City acknowledges that Utility will acquire from Power Provider under the Solar\*Rewards Agreement all RECs associated with the Generating Facility. The City shall not make any statement contrary to Utility’s ownership of the RECs, including but not limited to any public claim of renewable, green or environmental benefits associated with the Generating Facility.

7. **REPRESENTATIONS:** Each Party represents to the other Party that (a) such Party is duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to

consummate the transactions contemplated hereby; (b) the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized by all necessary corporate or other actions; (c) this Agreement is a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms.

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

**9. DEFENSE AND INDEMNIFICATION:**

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

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

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

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

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

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

**11. CONFLICT OF INTEREST:**

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

**B.** Power Provider shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. Power Provider represents that it has disclosed any and all current conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of Power Provider by placing Power Provider's own interests, or the interests of any party with whom Power 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 if it determines a conflict exists, after it has given Power Provider written notice describing the conflict, and thirty (30) days to cure such conflict.

**12. DISPUTES:** All disputes between the City and Power Provider arising out of or regarding the Agreement will first attempted to be resolved through the use of good faith and reasonable diligent efforts. In the event such efforts to resolve such disputes are not successful within thirty (30) days' notice of such dispute from one Party to another, the dispute will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Agreement.

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

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

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

**16. EXAMINATION OF RECORDS:**

**A.** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Power Provider's performance pursuant to this Agreement, provision of any goods or services to the City, and any other



transactions related to this Agreement. Power Provider shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. 20-276.

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

**17. TERMINATION:**

**a.** The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the Power Provider. However, nothing gives the Power Provider the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Executive Director.

**b.** Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Power Provider or any of its 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 Power Provider's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

**c.** Upon termination of the Agreement, with or without cause, the Power Provider shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

**d.** If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Power Provider's possession, custody, or control by whatever method the City deems expedient. The Power Provider shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Power Provider shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

**18. ASSIGNMENT; SUBCONTRACTING:** Power Provider shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement

without obtaining the Executive Director's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment or subcontracting without such consent will be ineffective and void and will be cause for termination of this Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, and such consent shall not unreasonably be withheld. The Executive Director has sole and absolute discretion to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any unauthorized subcontracting or assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any subcontractor or assign.

**19. 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 Power Provider and the City, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of Power Provider and the City that any person other than Power Provider or the City receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

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

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

Power Provider:

City: Executive Director of General Services/Department  
of Aviation  
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

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

**22. CONFIDENTIAL INFORMATION:** The Power Provider acknowledges and accepts that, in performance of all work under the terms of this Agreement, the Power Provider may have access to

Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. The Power Provider agrees that all Proprietary Data, confidential information, or any other data or information provided or otherwise disclosed by the City to the Power Provider shall be held in confidence and used only in the performance of its obligations under this Agreement. The Power Provider shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent Power Provider would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential", or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to the Power Provider by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

23. **ADVERTISING AND PUBLIC DISCLOSURE**: The Power Provider shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Power Provider'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 Power Provider 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.

24. **INTELLECTUAL PROPERTY RIGHTS**: The City and the Power Provider intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Power Provider solely pursuant to this Agreement and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, "**Materials**"), shall belong to the City. The Power Provider shall disclose all such items to the City and shall assign such rights over to the City upon completion of the Project. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, et seq., the Materials are a "work made for hire" and all City ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Power Provider (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity. The City grants to the Power Provider a perpetual, irrevocable, royalty-free, fully paid up, non-exclusive license to use Materials, to the extent such Materials do not include Proprietary Data as defined herein, for any purpose related to this Agreement, all related agreements, and any future solar photovoltaic project.

25. **LEGAL AUTHORITY**: The Power Provider represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of the Power Provider represents and warrants that he has been fully authorized by the Power Provider to execute the Agreement on behalf of the Power Provider and to validly and legally bind Power Provider to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either the Operator or the person signing the Agreement to enter into the Agreement.

26. **NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Operator 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 Denver Revised Municipal Code.

27. **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.

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

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

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

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

32. **SEVERABILITY:** Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and non-appealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions shall remain in full force and effect as if this Agreement had been executed without the invalid portion.

33. **SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Power Provider's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

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

35. **INUREMENT:** The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

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

37. **WHEN RIGHTS AND REMEDIES NOT WAIVED**: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Power Provider. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

38. **NO CONSTRUCTION AGAINST DRAFTING PARTY**: The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

39. **ORDER OF PRECEDENCE**: In the event of any conflicts between the language of the Agreement and the Exhibits, the language of the Agreement controls. Notwithstanding the foregoing, each Exhibit controls to the extent of scope, pricing, and time aspects of the services specified in such Exhibit, but not to the extent of legal terms and conditions (if any) specified in such Exhibit.

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

**List of Exhibits:**

*The following exhibits are attached and incorporated by reference herein.*

**EXHIBIT A:** Description of Property/Site

**EXHIBIT B:** Power Purchase Price

**EXHIBIT C:** Estimated Annual Energy Output

**EXHIBIT D:** Insurance ACORD Certificate

**EXHIBIT E:** Xcel Energy – Small Generator Interconnection Agreement

**EXHIBIT F:** Xcel Energy – Solar\*Rewards Program Acceptance Form

**EXHIBIT G:** Xcel Energy – Solar Bank Election Form

**[remainder of page intentionally left blank]**

**EXHIBIT A: Property**  
 (Subject to Change upon Final Design and Approval by City)

<b>Site Name</b>	<b>Site Address</b>	<b>PV Systems Type</b>	<b>Size (kW-DC)</b>	<b>Size (kW-AC)</b>
------------------	---------------------	------------------------	---------------------	---------------------

**Depiction of Property**

[Insert an aerial view of the Property that depicts the System Location and Parcel Boundary.]

**Major System Components**

<b>Quantity</b>	<b>DESCRIPTION</b>
	Modules
	Inverter(s)
	Optimizers/RSDs
	Racking
	Transformer
	Disconnect(s)
	AlsoEnergy Data Acquisition System (DAS) Package
	Other

**Indicative Site Plan**

[A sufficient Indicative Site Plan shall show major system component locations including solar modules, solar inverters, point of interconnection location, metering location, conceptual AC distribution between solar array and point of interconnection.]

**EXHIBIT B: Power Purchase Price**

The per kWhac Purchase Price shall start at \$0.075 per kWhac and escalate by 2% per year. Year 1 pricing starts at date of energization and steps up on January 1 of each subsequent calendar year. This pricing is for indicative purposes only and may change on a case-by-case basis.

<b>Year</b>	<b>Power Purchase Price (per kWhac)</b>
1	\$0.0750
2	\$0.0765
3	\$0.0780
4	\$0.0796
5	\$0.0812
6	\$0.0828
7	\$0.0845
8	\$0.0862
9	\$0.0879
10	\$0.0896
11	\$0.0914
12	\$0.0933
13	\$0.0951
14	\$0.0970
15	\$0.0990
16	\$0.1009
17	\$0.1030
18	\$0.1050
19	\$0.1071
20	\$0.1093
21	\$0.1114
22	\$0.1137
23	\$0.1159
24	\$0.1183
25	\$0.1206

**EXHIBIT C: Estimated Annual Energy Output**

The estimated annual Energy Output of the Generating Facility is detailed below.

<b>Year</b>	<b>Estimated Energy Output – kWhac</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

## Notes:

- This estimate may be updated by Power Provider, if needed, should the final designs, project location, and/or production capacity of the Generating Facility change. If such changes occur, Power Provider shall notify the City and provide updated estimates prior to a System achieving Commercial Operation.
- This estimate is in no way a guarantee of delivered kWhac to the City.
- Energy Output is anticipated to decrease annually by 0.5%



**EXHIBIT D: Insurance ACORD Certificate**

**EXHIBIT E: Xcel Energy – Small Generator Interconnection Agreement**

The Parties understand and agree that a Small Generator Interconnection Agreement will need to be executed with Xcel Energy prior to the Generating Facility achieving Commercial Operation.

**EXHIBIT F: Xcel Energy – Solar\*Rewards Program Acceptance Form**

The City understands that participation in Xcel Energy’s Solar\*Rewards program creates additional economic value for the City. The Agency that pays utility bills at the Property is responsible for submitting an application and obtaining approval to participate in the Xcel Energy Solar\*Rewards Program prior to the Generating Facility achieving Commercial Operation.

**EXHIBIT G: Xcel Energy – Solar Bank Election Form**

The City understands that Xcel Energy requires solar customers to make an election regarding any excess generation that a net metered PV system may or may not produce. The Office of Climate Action, Sustainability, and Resiliency recommends selecting the “Continuous Rollover Credit” option as providing the best economic value for the City. The Agency that pays utility bills at the Property is responsible for completing the Solar Bank Election Form prior to the Generating Facility achieving Commercial Operation.