

MASTER OPERATOR AGREEMENT

THIS MASTER OPERATOR 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 doing business at 16025 Table Mountain Parkway, #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 at the locations described in **Exhibit D**, attached hereto and made a part hereof (individually, a “**Property**,” and collectively, the “**Properties**”);

WHEREAS, the City has determined that it is desirable and appropriate that electricity grid-connected photovoltaic, solar power plants owned by the City (individually, a “**Generating Facility**,” and collectively, the “**Generating Facilities**”) be developed, constructed, equipped, operated, and maintained by the Operator on the Properties as further described in **Exhibit D** and that such use is compatible and appropriate within the uses allowed for the 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;

WHEREAS, the City deems it appropriate and necessary in the public interest to have the Generating Facilities operated on its behalf by the Operator, but under and subject to the continuing jurisdiction, supervision and control of the City as herein provided; and

WHEREAS, the City also deems it appropriate and necessary in the public interest to have the Operator administer on the City’s behalf the subscription of electric customers to 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 City has determined that it is desirable and appropriate to have the Operator develop, construct, and equip Level 2 dual port, hardwired electric vehicle chargers owned by the City (“**Electric Vehicle Charging Equipment**”) on certain Properties selected by the City and that such use is compatible and appropriate within the uses allowed for the Properties, in order to put the Properties 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.

WHEREAS, the City has determined that it is desirable for the Operator to perform its obligations relating to the Generating Facilities and the Electric Vehicle Charging Equipment

(together, the “**Facilities**”) pursuant to general terms and conditions included in this Agreement, with agreement schedules attached to the Agreement which govern the specific scope, price, and other terms and conditions for each of the two main aspects of Operator’s obligations, including (i) development, design and construction of the Facilities (**Exhibit A—Construction Special Conditions**); and (ii) asset management of the Generating Facilities (**Exhibit B—Asset Management Special Conditions**), which includes operation and maintenance, Xcel Energy program compliance, and retail customer subscription to the power generated by the Generating Facilities.

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 twenty-five (25) years thereafter (the “**Term**”). The term of this Agreement may be extended by mutual agreement under the same, or agreed upon different, terms and conditions 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) Contract Price. 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 D** (“**Contract Price**”). Amounts billed may not exceed the schedules set forth in **Exhibit D**.

(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 invoices for services outlined in **Exhibit B - Asset Management Special Conditions** shall be separate from those provided for the services outlined in **Exhibit A – Construction Special Conditions**. 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 **TWENTY-SIX MILLION DOLLARS AND NO CENTS (\$26,000,000.00)** (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 SRC Subscriber payments and REC Incentive payments made to the Operator by Generating Facility subscribers (“**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. **STATUS OF OPERATOR:** The Operator is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Operator nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

6. **ACCESS TO 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 Properties for the purposes of constructing, 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 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. Excepting DEN Properties, the City hereby authorizes the Operator to access the Properties for the purposes of constructing the Electric Vehicle Charging Equipment 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 DPR may require a TCAP. The Operator shall coordinate its access to the Properties with the Executive Director, and the Operator’s access to the Properties shall be subject to such reasonable rules as the City may adopt.

c. It is understood that the use of the Properties is 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.

d. 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 and a form license for EV Charging Equipment 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.

e. 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 and/or Electric Vehicle Charging Equipment 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. Prior to entering into a lease or license with a third party for purposes of the construction, operation, and maintenance of Generating Facilities and/or Electric Vehicle Charging Equipment, the City shall provide the Operator with an opportunity to review and comment on the lease or license and object to any provisions. To the extent the Operator's performance under this Agreement is materially hindered by the terms or conditions of any lease or license entered into by the City with a third party for purposes of the construction, operation, and maintenance of Generating Facilities and/or Electric Vehicle Charging Equipment, and the Operator objected to the relevant terms or conditions and the Operator did not cause the City to be in breach of such lease or license, the Operator's compensation shall be equitably adjusted or the Operator shall be excused from performance of the terms or conditions of such lease or license materially impacting the Operator's performance and the Operator shall not be in breach of this Agreement.

f. 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.

7. 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.

8. 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.

9. TERMINATION:

a. Each Party has the right to terminate in accordance with the default provisions set forth in Section 8 of this Agreement.

b. Termination by the City.

(1) The City has the right to terminate as provided in Sections 7, 18, 20, 25, 27, and 32 of this Agreement.

(2) The City may terminate the Agreement for convenience once the Operator’s Exhibit A performance obligations for all Generating Facilities and EV Charging Equipment included in Project Tranche 1 have been completed and the Operator has no remaining obligations under Exhibit A with respect to Project Tranche 1 upon one hundred eighty (180) days’ prior written notice to the Operator. Nothing gives the Operator the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Executive Director. During the 180-day 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 Operator shall be entitled to compensation for commercially reasonable costs it incurs as a direct result from the City’s termination and in connection with winding down its and its subcontractors’ and vendors’ work, operations, and services during such period, which may include but are not limited to Operator staff time, cancellation of subcontractor agreements, restocking fees and/or cancellation penalties associated with vendor contracts, assignment of agreements, coordination and communication with the Utility Provider, and other administrative wind down costs as applicable. The Operator shall provide the City with an invoice for such costs at least thirty (30) days prior to termination and the City shall pay the invoice upon termination. Such compensation payable to the Operator by the City shall not exceed \$50,000.00 in the aggregate.

(3) 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 the Operator's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

(4) Upon termination of the Agreement by the City, 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.

c. Termination by the Operator.

(1) The Operator has no right to terminate for convenience during performance of the services described in Exhibit A. The Operator may terminate for convenience once the Operator's Exhibit A obligations for all Generating Facilities and EV Charging Equipment included in Project Tranche 1 have been completed and the Operator has no remaining obligations under Exhibit A with respect to Project Tranche 1 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.

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 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".

e. 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 Subscription Agreements, SRC Subscriber Agency Agreements, and Solar Rewards Community Producer 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.

10. 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.

11. 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.

12. 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. For purposes of clarification, the Operator shall not be required to provide builders risk insurance or property/asset insurance, and the City will provide any such coverage, through commercial policy or self-insurance, necessary to meet the City's liabilities in accordance with the limits of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101-120. Operator shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-" VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the above-described 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. If any policy is in excess

of a deductible or self-insured retention, the City must be notified by the Operator. 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 Operator may deem necessary to cover its obligations and liabilities under this Agreement.

b. Proof of Insurance: Operator shall provide a copy of this Agreement to its insurance agent or broker. Operator may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Operator certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of 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, Auto Liability, and Excess Liability/Umbrella (if required) Operator and Operator's subcontractor'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, Operator's insurer shall waive subrogation rights against the City.

e. Subcontractors: 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) are required to procure and maintain the 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/Employer's Liability Insurance: 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. Operator expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Operator's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Operator executes this Agreement.

g. Commercial General Liability: Operator shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for

each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

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

i. 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.

j. Additional Provisions:

(1) For Commercial General Liability, the policy must provide the following:

(a) That this Agreement is an Insured Contract under the policy;

(b) Defense costs are outside the limits of liability;

(c) A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and

(d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) For claims-made coverage:

(a) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(b) Operator shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Operator will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

13. 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.

14. LIMITATION ON LIABILITY: The Operator agrees that no liability shall attach to the City for any damages or losses incurred or claimed by Operator or any other person or party on account of the construction, installation, or operation of the Generating Facility, Electric Vehicle Charging Equipment, or other improvements to or upon the Properties made by the Operator. The Operator agrees that no liability shall attach to the City for any interference or delay caused by construction in adjacent areas or the Properties' operations, including, without limitation, damages or losses in the nature of delay damages, lost labor productivity, and impact damages. The City agrees that no liability shall attach to the Operator as a result of any City-caused interference or delay.

15. 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.

16. LETTER OF CREDIT, CONSTRUCTION BONDS: Prior to the commencement of construction of a Generating Facility or Electric Vehicle Charging Equipment at a specific Property, the Operator shall deliver to the Executive Director a payment and

performance bond on a form approved by the City Attorney's Office, or alternate form of surety, letter of credit or alternate form of assurance acceptable and approved by the City Attorney's Office, in a sum not less than One Hundred Percent (100%) of the construction costs for the Generating Facilities as outlined in the Cost Proposal (as defined in Exhibit A, Attachment 1, Article 10.B) payable to the City. Said bond shall guarantee prompt and faithful payment by the Operator directly to the Operator's contractors and by the Operator's contractors to all persons supplying labor, materials, team hire, sustenance, provisions, provender, supplies, rental machinery, tools and equipment used directly or indirectly by the said contractor, subcontractor(s) and suppliers in the prosecution of the work provided for in said construction contract and shall protect the City from any liability, losses or damages arising therefrom. All bonds shall be issued by a surety company licensed to transact business in the State of Colorado and satisfactory to and approved by the City. A payment and performance bond, or alternate form of surety, letter of credit or alternate form of assurance shall not be required for the asset management services as outlined in the Exhibits.

17. 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.

18. 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. 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.

19. 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.

20. 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. Any assignee must have the same or similar qualifications as the Operator, including but not limited to, experience in developing, constructing, commissioning, and operating generating facilities similar to the Generating Facilities constructed pursuant to this Agreement in the United States within the last five (5) years prior to any assignment. 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 sub-operator, subcontractor or assign. Notwithstanding anything to the contrary in this Agreement or the foregoing sentences of this paragraph, to the extent applicable law requires performance of some services, including all or part of Exhibit B services, to a separate legal entity named McKinstry RDCS 1, LLC, the City directs and consents to the Operator subcontracting to such entity to perform such services. If the Operator assigns the entirety of its rights and obligations under the Agreement, the Operator shall have no further liability to City or any third party in connection with such assignment. For the avoidance of doubt, the Operator shall have no liability to the City or any third party for any liability, damages, cause of action, or other claim of any type, related to performance, conduct, action, inaction, or activities by a replacement operator; and the City shall have no claim against the Operator by reason of, or arising out of, incidental to, or relating to, matters arising after assignment.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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 3rd 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.

27. 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.

28. **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.

29. **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).

30. **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.

31. **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.

32. **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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

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.

43. XCEL ENERGY PRODUCER AGREEMENTS. Should the City decide to remove a Generating Facility, or cause a Generating Facility, through its actions or inactions, to be out of service for more than ninety (90) consecutive days, the City shall be solely responsible for damages the Operator may be liable for as a direct result of the City's actions or inactions, including damages under the Producer Agreements and Subscriber Agreements entered into by the Operator pursuant to this Agreement.

44. YELLOW BOOK. The Department of Aviation Department of Public Works Standard Specifications for Construction General Contract Conditions ("**Yellow Book**") shall only apply to the construction services provided by the Operator as outlined in Exhibit A. The Yellow Book does not apply to the Asset Management services provided by the Operator as outlined in Exhibit B. Additionally, adding Generating Facilities to Project Tranche One, or adding a new Project Tranche shall be added through a contract amendment and not be considered a Change Order as defined in the Yellow Book. To the extent that there is conflict or ambiguity between the provisions of this Agreement, Exhibit A, and the Yellow Book, the order of precedence to resolve such conflict or ambiguity shall be this Agreement first, Exhibit A second, and the Yellow book third.

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

Agreement Exhibit List

Exhibit A - Construction Special Conditions

Attachment 1: General Conditions

Attachment 2: Scope of Work

- Attachment 3: Completion Checklists
- Attachment 4: Generating Facility Commissioning Checklist
- Attachment 5: Generating Facility Performance Test
- Attachment 6: Notice to Proceed Template
- Attachment 7: Labor Rate Table

Exhibit B – Generating Facility Asset Management Special Conditions

- Attachment 1: General Conditions
- Attachment 2: Scope of Work
- Attachment 3: Preventative Maintenance Checklist
- Attachment 4: SRC Subscriber Agency Agreement
- Attachment 5: Solar Power Subscription Agreement Template
- Attachment 6: Time and Materials Rates

Exhibit C - Certificate of Insurance

Exhibit D - Project Tranche One

- Attachment 1: List and Depiction of Properties
- Attachment 2: Project Specifications
- Attachment 3: REC Incentive, Subscription Mix/Rates, and Subscriber Allocations
- Attachment 4: Development, Design and Construction and Interconnection Budgets
- Attachment 5: Asset Management Fee Schedule
- Attachment 6: Community Engagement and Workforce Plan
- Attachment 7: Xcel Energy Producer Agreement Template
- Attachment 8: Site Leases and/or Licenses General Terms

Additional Project Tranches may be added to this Agreement, including as additional exhibits, by amending this Agreement or executing new Agreement with these same Parties.

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Contract Control Number: CASR-202160096-00
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-202160096-00
MCKINSTRY ESSENTION, LLC

DocuSigned by:

By: E41AF7BDBA7E403...

Leslie Larocque
Name: _____
(please print)
Vice President, MTN Region
Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A

CONSTRUCTION SPECIAL CONDITIONS

Attachment 1 - General Conditions

1 ARTICLE 1. DEFINITIONS

A. CONTRACT DOCUMENTS

The “**Contract Documents**” consist of the following, some of which are procedural documents used in the administration and performance of the Special Conditions:

1. The Agreement
2. Performance Bond and Labor and Material Payment Bond
3. Applicable provisions of the DEPARTMENT OF AVIATION DEPARTMENT OF PUBLIC WORKS STANDARD SPECIFICATIONS FOR CONSTRUCTION GENERAL CONTRACT CONDITIONS as identified in this Attachment 1
4. Design Submittal Package developed by the Operator and accepted by the City, prior to the Notice to Proceed to Commence Construction Phase
5. Project Tranche Cost Proposal
6. Change Orders and any Amendments
7. Notice to Proceed to Commence to Development Phase
8. Notice to Proceed to Commence Design Phase
9. Notice to Proceed to Commence Construction Phase
10. Notice of Mechanical Completion Acceptance
11. Notice of Substantial Completion Acceptance
12. Notice of Final Acceptance
13. Other procedural and reporting documents or forms referred to in these General Conditions of the Agreement, the Specifications or required by the City.

B. DEFINITIONS OF WORDS AND TERMS USED

These words and terms are specific to this Special Conditions exhibit but may appear elsewhere in this Agreement. Likewise, words and terms defined in other Special Conditions exhibits and this Agreement may appear in this Special Conditions section. If there is any discrepancy between the terms, conditions or definitions in this Exhibit A and the applicable terms, conditions or definitions contained in the DEPARTMENT OF AVIATION DEPARTMENT OF PUBLIC WORKS STANDARD SPECIFICATIONS FOR CONSTRUCTION GENERAL CONTRACT CONDITIONS (“the Yellow Book”) explicitly listed in this Attachment 1, the Yellow Book takes precedence over these terms, conditions and/or definitions.

1. “*Applicable Law*” means all constitutions, statutes, laws, treaties, ordinances, exemptions, judgments, decrees, injunctions, writs, orders, rules, regulations, codes, specified standards or objective criteria contained in any applicable permit or approval (which standards or criteria must be met in order for the Work to be performed lawfully) or other legislative, judicial or

- administrative action, now existing or hereafter enacted, of any authority having jurisdiction over the Generating Facility or the Property.
2. “*Authority Having Jurisdiction*” or “*AHJ*” means any state, national, regional, province, town, city, or municipal government, whether federal, state, or local, or other administrative, regulatory or judicial body of any of the foregoing having jurisdiction over the City, the Operator, the Generating Facility, or the Property.
 3. “*Change Order*” means a written order, signed by City directing Operator to make changes in the Work, in accordance with Article 27, Changes in the Scope of Work.
 4. “*Commenced Installation*” shall be defined as project materials being delivered on Site and work of a physical nature has begun.
 5. “*Construction Schedule*” shall mean the schedule for prosecution of the Work as set forth in the Design Submittal Package for each Generating Facility, as may be mutually amended by the Parties in accordance with the Agreement.
 6. “*C.R.S.*” means the Colorado Revised Statutes, as amended.
 7. “*Days*” See Yellow Book Title 1, Section 108.
 8. “*Design Submittal Package*” means the System design documents pursuant to **Attachment 2** that City will timely review and approve.
 9. “*DPR Specifications and Standards*” means the Department of Parks and Recreation design, construction, landscape, and other requirements applying to installation and other work in parks.
 10. “*Emergency Field Change Order*” See Yellow Book Title 11, Section 1101.
 11. “*Final Acceptance*” shall mean the stage in the progress of the Project, after Substantial Completion, when all items of Work have been completed, all requirements of the Contract Documents are satisfied and the Final Acceptance checklist has been executed by the Parties.
 12. “*Interconnection Agreement*” shall mean the separate agreement to be entered into between the City and Utility Provider providing the terms and conditions by which SRC Producer may interconnect and operate the Generating Facility in parallel with Utility Provider’s electric system at the Solar Garden Site.
 13. “*kWhac*” means kilowatt-hour alternating current of electricity.
 14. “*Meter*” shall mean the measuring facility installed by Utility Provider to measure the Photovoltaic Energy produced by the Generating Facilities at the point where the Photovoltaic Energy and the associated RECs change possession from SRC Producer to the Utility Provider.
 15. “*Mechanical Completion*” means (i) the System is mechanically assembled, (ii) the Operator has performed, or the City has waived, the requirements set forth in the Mechanical Completion Checklist attached hereto as **Attachment 3**, (iii) the Operator has executed and delivered to the City the Mechanical Completion Checklist, and (iv) the City has executed the Mechanical Completion Checklist. Notwithstanding the foregoing, Mechanical Completion shall be considered achieved if the Operator cannot meet any of the above conditions due to actions or inactions of the City, but Contractor has met all other conditions within its reasonable control. “*Milestone*” means the milestones for completion of the Generating Facility, including, as applicable, Commenced Installation, Substantial Completion and Final Acceptance

16. “*Minimum Capacity Guarantee*” means the minimum power capacity (i.e. performance level) that the Performance Test results must meet or exceed in order to achieve Final Acceptance, expressed as a percentage.
17. “*Notice to Proceed*” or “*NTP*” means the written approval by the City to commence the development, design, or construction phases for a Project Tranche and/or Generating Facility. These notices shall be delivered to the Operator using the procedural document in Attachment 6.
18. “*OEM*” means the original equipment manufacturers for the System Components as more particularly set forth in the Specifications.
19. “*Performance Test*” means the test conducted to demonstrate the performance of the Generating Facility meets or exceeds its Minimum Capacity Guarantee.
20. “*Permission to Operate*” means the Utility Provider has issued written approval for the Generating Facility to be energized.
21. “*Permit*” means any license, approval, consent, permit, authorization, registration, notification, waiver, exemption, variance, franchise or similar order from any Authority Having Jurisdiction.
22. “*Person*” means any individual or entity.
23. “*Photovoltaic Energy*” shall mean the net electric energy generated from the Generating Facility, using solar radiation energy to generate electricity delivered to Utility Provider and measured at the Meter.
24. “*Placed in Service*” means the Generating Facility has Permission to Operate by the Utility Provider and is energized and producing electricity.
25. “*Placed in Service Date*” means the date on which the Generating Facility has been Placed in Service.
26. “*Project*” means the development, design, and construction of a Generating Facility or set of Generating Facilities.
27. “*Product Data*” shall mean all submittals in the form of printed manufacturer’s literature, manufacturer’s specifications, and catalog cuts.
28. “*Project Tranche*” shall mean one of more Generating Facilities that have been awarded interconnection capacity with the Utility Provider’s community solar program as identified in the Agreement and any amendments thereto.
29. “*Reasonably Inferable*” means that, if an item or system is either shown or specified, all material and equipment normally furnished with such items or systems and needed to make a complete installation shall be provided whether mentioned or not, omitting only such parts as are specifically excepted, and shall include only components which Operator could reasonably anticipate based on his or her skill and knowledge using an objective, industry standard, not a subjective standard. This term takes into consideration the normal understanding that not every detail is to be given on the Shop Drawings and Specifications.
30. “*Scope of Work*” means the scopes of work covered in this Agreement as outlined in Exhibit A and Exhibit B.
31. “*Shop Drawings*” See Yellow Book Title 1, Section 117.
32. “*Site Host*” means the Owner of the Property.
33. “*Solar Rewards Community (SRC) Program*” shall mean the Utility Provider’s community solar program.

34. “*Specifications*” shall mean the written requirements for the Work to be accomplished.
35. “*Subcontractor*” See Yellow Book Title 1, Section 118.
36. “*Submittals*” means drawings, lists, tables, documents and samples prepared by the Operator to facilitate the progress of the Work as required by these General Conditions and Specifications. They consist of Shop Drawings, Product Data, Samples, and various administrative support documents including but not limited to lists of Subcontractors, construction progress schedules, schedules of values, applications for payment, inspection and test results, requests for information, various document logs, and as-built drawings. Submittals are required by the Contract Documents, but except to the extent expressly specified otherwise are not themselves a part of the Contract.
37. “*Substantial Completion*” See Yellow Book Title 1, Section 119.
38. “*Supplier*” means a Person of any tier of supply that primarily supplies equipment or materials and is not primarily supplying services to the Operator at the Property in discharge of a portion of the Work.
39. “*Surety*” shall mean any company providing labor and material payment and performance bonds for the Operator as obligor.
40. “*System Components*” means the system components set forth in **Exhibit D** and further defined in the Design Submittal Package.
41. “*Utility Provider*” means Public Service Company of Colorado doing business as Xcel Energy.
42. “*Work*” See Yellow Book Title 1, Section 121.

2 ARTICLE 2. EXECUTION, CORRELATION, INTENT OF DOCUMENTS, COMMUNICATION AND COOPERATION

A. CORRELATION

Upon execution of the Agreement, the Operator represents that the Operator has visited the Properties, has become familiar with local conditions and local requirements under which the Work is to be performed, including the building code programs of the Authority Having Jurisdiction, and has correlated personal observations with the requirements of the Contract Documents.

B. INTENT OF DOCUMENTS

The Contract Documents are complementary, and what is called for by any one document shall be as binding as if called for by all. The intention of the Contract Documents is to include all labor, materials, equipment and transportation necessary for the proper execution of the Work. Words describing materials or Work which have a well-known technical or trade meaning shall be held to refer to such recognized standards.

Where a conflict occurs between or within standards, Specifications or Shop Drawings, which is not resolved by reference to the precedence between the Contract Documents, the more stringent or higher quality requirements shall apply, so long as such more stringent or higher quality requirements are reasonably inferable. The City shall decide with the Operator a mutually agreeable resolution which requirements will provide the best installation. Change Orders and Amendments, if any, to the Contract Documents take precedence over the original Contract Documents.

Unless the context otherwise requires, form numbers in this document are for convenience only. In the event of any conflict between the forms required by name or context and the form required by number, the form required by name or context shall control.

Notwithstanding any of the above, the terms of the main body of the Agreement shall control and take precedence over any conflicting terms set forth in the Exhibits or other Contract Documents.

3 ARTICLE 3. COPIES FURNISHED

The Operator shall furnish to City the number of copies in hard copy and electronic copy of Shop Drawings as reasonably necessary for the execution of the Work.

4 ARTICLE 4. DECISIONS AND JUDGMENTS, ACCESS TO WORK AND INSPECTION

A. DECISIONS

The Operator shall, within a reasonable time, make decisions on all matters relating to the execution and progress of the Work.

Such decisions by the Operator shall be promptly forwarded to the City. The City may consent with such decision by the Operator or amend/revise such decision at the discretion of the City.

B. JUDGMENTS

The City is the judge of the performance required by the Contract Documents as it relates to compliance with the Work and quality of workmanship and materials.

C. ACCESS TO WORK

The City and representatives of the City shall at all times have access to the Work. The Operator shall provide proper facilities for such access and for their observations or inspection of the Work.

D. INSPECTION

The City or consultants to the City shall have the absolute right to visit the Properties to generally observe the progress and quality of the Work to determine in general if the Work is proceeding in accordance with the Contract Documents. Observation may extend to all or any part of the Work and to the preparation, fabrication or manufacture of materials.

If the Agreement, the laws, or ordinances of any public authority require any Work to be specifically tested or approved, the Operator shall give the City and appropriate testing agency (if necessary) timely notice of its readiness for observation by the City or inspection by another authority, and if the inspection is by another authority, of the date fixed for such inspection, required certificates of inspection being secured by the Operator. The Operator shall give all required Notices to the City and Authority Having Jurisdiction for inspections required for the building inspection program. If such Work is found to be not in accordance with the Contract Documents, the Operator shall pay such costs, unless the Operator demonstrates that the defect in the Work was caused by another operator engaged by the City. In that event, the City shall pay such cost. In addition, examination of questioned Work may be ordered by the City, and if so ordered, the Work must be uncovered by the Operator. If such Work be found in accordance with the Contract Documents, the Operator shall be reimbursed the cost of examination and replacement.

5 ARTICLE 5. OPERATOR'S SUPERINTENDENCE AND SUPERVISION

The Operator shall employ, and keep present on the Property during the construction activities of a Generating Facility, a competent superintendent and any necessary assistants, all satisfactory to the City. The superintendent shall not be changed except with the consent of the City, unless the superintendent proves to be unsatisfactory to the Operator or

ceases to be in his or her employ. The superintendent shall represent the Operator in in the Operator's absence and all directions given to the superintendent shall be as binding as if given to the Operator. Directions received by the superintendent shall be documented by the superintendent and confirmed in writing with the Operator.

The Operator shall give efficient supervision to the Work, using a level of care consistent with the same level of care and skill ordinarily exercised by operators practicing under similar conditions. The Operator shall carefully study and compare all Shop Drawings, Specifications and other written instructions and shall without delay report any error, inconsistency or omission which the Operator may discover in writing to the City.

The superintendent shall see that the Work is carried out in accordance with the Contract Documents and using a level of care consistent with the same level of care and skill ordinarily exercised by Superintendents practicing under similar conditions. The Operator's superintendent shall establish all lines, levels, and marks necessary to facilitate the operations of all concerned in the Operator's Work. The Operator shall lay out all work in a manner satisfactory to the City making appropriate permanent records for all other parts of the Work.

6 ARTICLE 6. MATERIALS AND EMPLOYEES

Unless otherwise stipulated, the Operator shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the Work.

Unless otherwise specified, all materials and equipment shall be new and both workmanship and materials shall be of uniform quality. The Operator shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The Operator is fully responsible for all acts and omissions of the Operator's employees and shall at all times enforce strict discipline and good order among employees on the Properties. The Operator shall not employ on the Work any person reasonably deemed unfit by the City or anyone not skilled in the Work assigned to such person.

7 ARTICLE 7. SURVEYS, PERMITS, LAWS, TAXES AND REGULATIONS

A. SURVEYS

The City shall furnish all surveys, property lines and benchmarks deemed necessary by the Operator, unless otherwise specified.

B. PERMITS AND LICENSES

Permits and licenses necessary for the prosecution of the Work shall be secured and paid for by the Operator. The Operator's employees shall become personally familiar with permit requirements and shall fully comply with such requirements.

Easements for permanent structures or permanent changes to the Properties shall be secured and paid for by the City, unless otherwise specified.

8 ARTICLE 8. PROTECTION OF WORK AND PROPERTY

A. GENERAL PROVISIONS

Operator shall continuously maintain adequate protection of all Work, materials, and protect the Property from injury or loss arising in connection with this Agreement and adequately protect adjacent property as provided by law and the Contract Documents.

B. SAFETY PRECAUTIONS

The Operator shall take all necessary precautions for the safety of employees on the Project, and shall comply with all applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the Properties where the Work is being performed. Operator shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; and the Operator shall designate a responsible member of its organization on the Project, whose duty shall be the prevention of accidents. The name and position of any person so designated shall be reported to the City by the Operator.

The Operator shall take all precautions to insure that no part of any structure of any description is loaded beyond its carrying capacity with anything that will endanger its safety at any time during the Term of this Agreement; and provide for the adequacy and safety of all scaffolding and hoisting equipment. The Operator shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work, except as otherwise noted.

The Operator shall take due precautions when obstructing sidewalks, streets or other public ways in any manner, and shall provide, erect and maintain barricades, temporary walkways, roadways, trench covers, colored lights or danger signals and any other devices necessary or required to assure the safe passage of pedestrians and automobiles.

C. TREES

The Operator shall comply with Office of the City Forester Rules and Regulations regarding protection of trees and to protect and preserve the City's existing 19% tree canopy cover. The Operator's work shall be executed in a manner that allows for the successful protection and preservation of existing trees. Unavoidable tree removals will be mitigated through new plantings equal to or greater than that which was lost.

Tree canopy cover that must be removed through the Operator's work will be replaced with new trees planted within the same park, another park, or other public grounds as directed by the City Forester. New tree planting sites will be designed in a manner that will allow for the long-term successful growth of the tree.

9 ARTICLE 9. GENERATING FACILITY AND EV CHARGING BUDGETS

For each Project Tranche, the Operator is providing the indicative budgets related to the Generating Facilities and EV Charging Stations, which are included in Exhibit D. The Operator represents to the City that prior to providing these indicative budgets for inclusion in this agreement the Operator has visited and examined the Properties and other visible conditions affecting the Generating Facility and EV Charging Stations, if applicable, and reasonably believes it can perform the Work in accordance this Agreement for the proposed budget. However, the Parties agree that the Cost Proposal (as defined in Exhibit A, Attachment 1, Article 10.B) may differ for the budgets included in Project Tranche budgets in Exhibit D of this agreement based on due diligence performed during the development phase, City requirements, Utility Provider requirements, or market dynamics (tariffs, commodity price increases, etc.) outside the Operator's control. The following describe the budget line items set forth in Exhibit D and any additional Project Tranches that the Parties may agree to pursue in the future via an amendment to this Agreement or a new agreement.

A. DEVELOPMENT BUDGET DESCRIPTION

This is the indicative budget for the Development Phase Work (as defined in Exhibit A, Attachment 2, Section 3) for each Generating Facility and EV Charging Station, if applicable, included in a Project Tranche. The Parties agree that during the development phase, additional work may become necessary based on unforeseen circumstances, planning and zoning requirements for specific sites, City requests or requirements, etc. Should

this be the case, these additional scope items and associated costs will be added to the Agreement through a Change Order.

The City agrees that in course of development work a Property may be deemed to be unviable or cost prohibitive, as determined by the City, for the deployment of a Generating Facility and that in such instance any fee paid to the Operator for the Development Phase Work shall be “at risk” for the City. Should a Property be eliminated from the project the Operator will work with the City to identify an alternative suitable Property for a Generating Facility of a like size and EV Charging Station, if applicable, and provide the City with a development and construction cost proposal for the replacement Property. If acceptable to the City, the replacement Property and development costs will be added to this Agreement through a Change Order.

B. DESIGN BUDGET DESCRIPTION

This is the indicative budget for the development of the Design Submittal Package as outlined in Article 10.A. of this Attachment, which may be adjusted based on findings during the development phase.

C. CONSTRUCTION BUDGET DESCRIPTION

This is the indicative budget for the turnkey construction of the Generating Facilities and EV Charging Stations included in a Project Tranche.

D. INTERCONNECTION COST BUDGET DESCRIPTION

This is the indicative budget for the Utility Provider equipment and installation cost required for the interconnection of each Generating Facility and EV Charging Stations included in a Project Tranche. The City agrees that the actual interconnection costs may differ from the budget provided by the Utility Provider after completion of the required interconnect and/or system impact studies. Final interconnection costs shall be provided with the Cost Proposal and may be paid for by the Operator or the City directly to the Utility Provider.

10 ARTICLE 10. DESIGN SUBMITTAL PACKAGE AND COST PROPOSAL PROCESS

A. DESIGN SUBMITTAL PACKAGE

After completion of Development Phase Work, and receipt of the Notice to Proceed to Commence Design Phase from the City, the Operator shall prepare all engineering and installation drawings consistent with requirements of the Utility Provider’s interconnection standards, Authority Having Jurisdiction, and Applicable Law, and be consistent with prevailing industry standards in Colorado for solar arrays. Work in parks shall conform to DPR Specifications and Standards. The system design will comply with the Authority Having Jurisdiction permitting criteria and City requirements. The engineering design package that Operator shall prepare for the City will include without limitation, as applicable to the type of Generating Facility:

1. Generating Facility and EV Charging Station Shop Drawings as necessary to complete the Work
2. Structural design calculations and foundation depths and types for ground mount and canopy installations as applicable
3. Structural capacity calculations for rooftop Systems, as applicable
4. Product Data
5. Photometric studies and lighting plans for solar canopy systems
6. Civil plans, as applicable
7. EV Charging system design, as applicable

8. Fencing detail, as applicable
9. Restoration plan for landscaping and irrigation in parks
10. PVSyst reports
11. Utility Provider interconnection approval documentation
12. Utility Provider interconnection cost estimate
13. Recommended spare parts list
14. Construction Schedule
15. Design alternatives, if any

The City shall review the Design Submittal Package and comment on the Specifications, Shop Drawings, and Product Data within twenty (20) business days for conformance with information given and the design concept expressed in, or reasonably inferred from, the Contract Documents. The City shall clearly note the nature of all corrections to be made to the Specifications, Shop Drawings, and Product Data, if any and shall return the submittals to the Operator for such corrections.

In the event the Operator determines, in its reasonable judgment, that one or more of City's comments are not appropriate, the Operator will promptly notify the City of the Operator's objections or concerns regarding such comments. If City review includes a proposed change to the Specifications or Shop Drawings, then the change will be reviewed by the Operator to determine the cost and schedule impact and an adjustment to the Cost Proposal for the impacted Generating Facility will be made. The Operator will incorporate the City's comments, to the extent agreed upon by the Parties, and resubmit the Design Submittal Package. Once approved by the City, the Design Submittal Package shall constitute the construction documents used for the Generating Facility.

By preparing, approving, and/or submitting the Design Submittal Package, the Operator represents that the Operator has determined and verified all materials, field measurements, and field construction criteria related thereto, and has checked and coordinated the information contained within each submittal with the requirements of the Work, the Project and the Contract Documents and prior reviews and approvals.

B. COST PROPOSAL AND PRICE OF CONSTRUCTION

Along with the Design Submittal Package, the Operator shall provide the City with a cost proposal ("*Cost Proposal*") with a fixed price for the turnkey design, construction and interconnection of each Generating Facility and EV Charging Station, which may be updated based on City comments and changes requested during the Design Submittal Package review. The Cost Proposal shall include a list of allowances or exclusions, if any. The Parties agree that the Cost Proposal may differ for the indicative budget as shown in Exhibit D of this agreement based on due diligence performed during the development phase, City instruction, Utility Provider requirements, or market dynamics (tariffs, commodity price increases, labor shortages, etc.) outside the Operator's control. Upon approval of the Cost Proposal and issuance of the Notice to Proceed to Commence Construction by the City it shall become the price for the construction ("*Construction Price*") of that Generating Facility and EV Charging Stations, if applicable.

11 ARTICLE 11. DRAWINGS AND SPECIFICATIONS ON THE WORK

When applicable, as determined at the sole discretion of the City, the Operator shall keep on the Properties a printed or electronic copy of the Contract Documents in good order, including current copies of all Drawings and Specifications for the Work, and any approved Shop Drawings, Product Data or samples, and as-built drawings. All such documents shall be available to representatives of the City. In addition, the Operator shall keep on the Properties a printed or electronic copy of all approved addenda, Change Orders, and requests for information issued for the Work.

The Operator shall develop procedures to ensure the currency and accuracy of as-built drawings and shall maintain on a current basis a log of requests for information and responses thereto, a Product Data submittal log, and a sample submittal log to record the status of all necessary and required submittals.

12 ARTICLE 12. SCHEDULES

A. DEVELOPMENT AND DESIGN SCHEDULES

Prior to receiving the Notice to Proceed to Commence Development Phase or Notice to Proceed to Commence Design Phase, the Operator shall submit a detailed schedule identifying all phases of development and/or design, including time identified for the City to review and approve design documents and specifications at each design milestone. The schedule shall also identify adequate time for the document coordination between the Operator and each of its consultants.

B. CONSTRUCTION SCHEDULE

Prior to the Notice to Proceed to Commence Construction Phase for each Generating Facility and EV Charging Station, as applicable, the Operator shall submit to the City, as part of the Design Submittal Package, an overall timetable of the construction schedule for the Project. The schedule shall be in the form of a GANTT chart, or some other form acceptable to the City. Operator shall submit monthly updates of the construction schedule.

13 ARTICLE 13. COMMISSIONING AND TESTING

A. COMMISSIONING AND TESTING

Commissioning and test of the Generating Facilities shall be performance in accordance with Attachments included within Exhibit A.

14 ARTICLE 14. SUBCONTRACTS

A. SUBCONTRACTOR FORMS

All subcontracts will be between the Operator and the Subcontractors as approved by the City in accordance with the Agreement.

B. SUBCONTRACTOR SUBSTITUTION

The substitution of any Subcontractor listed in the Operator's proposal shall be justified in writing not less than twenty (20) days after the date of the Notice to Proceed to Commence Design Phase and shall be subject to the approval of the City. For reasons such as the Subcontractor's refusal to perform as agreed, subsequent unavailability or later discovered proposal errors, or other similar reasons, such substitution may be approved. The Operator shall bear any additional cost incurred by such substitutions.

C. OPERATOR RESPONSIBLE FOR SUBCONTRACTORS

The Operator shall not employ any Subcontractor that the City, within twenty (20) business days after the date of receipt of the Operator's list of Subcontractors or any supplemental list, reasonably objects to in writing as being unacceptable to the City. If a Subcontractor is deemed unacceptable, the Operator shall propose a substitute Subcontractor and the Cost Proposal sum shall be adjusted by any demonstrated difference between the Subcontractor's bids, except where the Subcontractor has been debarred by the State or fails to meet qualifications of the Contract Documents to perform the work proposed.

The Operator shall be fully responsible to the City for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by them. All instructions or orders in respect to work to be done by Subcontractors shall be given to the Operator.

15 ARTICLE 15. RELATIONS OF OPERATOR AND SUBCONTRACTORS

The Operator agrees to bind each Subcontractor to the terms of the Agreement, including these General Conditions, and to the requirements of the Shop Drawings and Specifications, and any addenda thereto, and also to all the other Contract Documents, as applicable to the Work of such Subcontractor.

Nothing contained in the Contract Documents shall be deemed to create any contractual relationship whatsoever between any Subcontractor and the City.

16 ARTICLE 16. USE OF PROPERTIES

The Operator shall confine apparatus, the storage of materials and the operations of workmen to limits indicated by law, ordinances, permits and any limits lines shown on the Shop Drawings or defined in the Scope of Work. The Operator shall not unreasonably encumber the Properties with materials. The Operator shall comply with and enforce all of the City's instructions and prohibitions regarding, without limitation, such matters as signs, advertisements, fires and smoking.

17 ARTICLE 17. CUTTING, FITTING OR PATCHING

The Operator shall do all cutting, fitting or patching of Work that may be required for the installation of the Generating Facilities.

18 ARTICLE 18. UTILITIES

A. TEMPORARY UTILITIES

As applicable to the Project, the Operator shall provide and pay for the installation of all temporary utilities required to supply all the power, light and water needed by him or her and other Subcontractors for their Work associated with the Project and shall install and maintain all such utilities in such manner as to protect the public and workmen and conform with any applicable laws and regulations. Upon completion of the work, he or she shall remove all such temporary utilities from the site, if applicable. The Operator shall pay for all consumption of power, light and water used by him or her and the other Operators used during the Project as it applies to these temporary utilities.

B. PROTECTION OF EXISTING UTILITIES

Where existing utilities, such as water mains, sanitary sewers, storm sewers, computer networks, and electrical conduits, are shown on the Shop Drawings, the Operator shall be responsible for the protection thereof, without regard to whether any such utilities are to be relocated or removed as a part of the Work. If any utilities are to be moved, the moving must be conducted in such manner as not to cause undue interruption or delay in the operation of the same. Specifically, the Project is located near the City's critical infrastructure and the Operator agrees not to interfere with those existing utilities.

C. CROSSING OF UTILITIES

If the construction of Generating Facilities crosses parking lots or utilities under the jurisdiction of State, city or other public agency, public utility or private entity, the Operator shall secure proper written permission before executing such construction.

19 ARTICLE 19. UNSUITABLE CONDITIONS

The Operator shall not work at any time, or permit any work to be done, under any conditions contrary to those recommended by manufacturers or industry standards which are otherwise proper, unsuited for proper execution, safety and performance.

20 ARTICLE 20. TEMPORARY FACILITIES

A. OFFICE FACILITIES

At the Operator's sole discretion, the Operator may choose to provide and maintain without additional expense for the duration of the Project temporary office facilities for his or her own use and the use of the representatives of the City.

B. WEATHER PROTECTION

The Operator shall, at all times, provide protection against weather, so as to maintain all Work, materials, apparatus and fixtures free from injury or damages. The Operator shall provide weathertight storage on substantial floors at least six (6) inches off the ground for all materials requiring protection from the weather.

C. DUST PARTITIONS

If the Scope of Work involves Work in an occupied existing building, the Operator shall erect and maintain during the progress of the Work, suitable dust-proof temporary partitions, or more permanent partitions as specified, to protect such building and the occupants thereof.

D. BENCHMARKS

The Operator shall maintain any Property benchmarks provided by the City and shall establish any additional benchmarks specified by the City as necessary for the Operator to layout the Work and ascertain all grades and levels as needed.

E. SIGN

The Operator may erect up to two signs not to exceed 4' x 8' Properties to identify the Project, the Operator, and other project partners as applicable, which shall be maintained in good condition during the life of the Project. For work in parks, signs may only be installed on construction fencing; no signs may be installed in the ground or staked into the ground.

F. SANITARY PROVISION

The Operator shall provide and maintain suitable, clean, temporary sanitary toilet facilities for any and all workmen engaged on the Work, for the entire construction period, in strict compliance with the requirement of all applicable codes, regulations, laws and ordinances, and no other facilities, new or existing, may be used by any person on the Project. When the Project is complete the Operator shall promptly remove them from the Properties, disinfect, and clean or treat the areas as required.

21 ARTICLE 21. CLEANING UP

The Operator shall keep Properties free from all surplus material, waste material, dirt and rubbish caused by employees or Work, and at the completion of the Work shall remove all such surplus material, waste material, dirt, and rubbish, as well as all tools, equipment, and scaffolding.

22 ARTICLE 22. OPERATOR'S PERFORMANCE AND PAYMENT BONDS

See Section 16 of the Agreement.

23 ARTICLE 23. APPLICATIONS FOR PAYMENTS

A. DEVELOPMENT PHASE PAYMENT

Upon Notice to Proceed to Development for each Generating Facility, the City shall pay the Operator the lump sum amount as shown in the Project budget attachment for each Project Tranche in Exhibit D, or as otherwise agreed to by the City and Operator.

B. DESIGN PHASE PAYMENT

Upon Notice to Proceed to Design for each Generating Facility, the City shall pay the Operator the lump sum amount as shown in the Project budget attachment for each Project Tranche in Exhibit D, or as otherwise agreed to by the City and Operator. This payment is for the services and portion of the Work required completed the Design Submittal Package for a given Generation Facility.

C. CONSTRUCTION PROGRESS PAYMENTS

The City shall pay the Operator upon the achievement of the Milestones per the following milestone payment schedule as required in response to the Operator invoices submitted in accordance with Section (4)(a) of the Agreement. Progress milestone payments shall be invoiced by Generating Facility and percentage allocations will be applied to the agreed upon Construction Price (as defined in Article 10.B).

Milestone	% of Construction Price	Value (\$)
Notice to Proceed to Commence Construction	25%	[\$]
Commenced Installation	35%	[\$]
Mechanical Completion	25%	[\$]
Substantial Completion	10%	[\$]
Final Acceptance	5%	[\$]
Contract Price Total	100%	[\$]

D. INVOICES

Upon receiving the applicable Notice to Proceed or achievement of a payment Milestone, the Operator shall submit an application for payment per Section (4)(a) of the Agreement to City.

24 ARTICLE 24. CORRECTION OF WORK BEFORE ACCEPTANCE

See Yellow Book Title 18.

25 ARTICLE 25. PAYMENTS WITHHELD

See Yellow Book Title 9, Title 20, and Title 22.

26 ARTICLE 26. DEDUCTIONS FOR UNCORRECTED WORK

See Yellow Book Title 11.

27 ARTICLE 27. CHANGES IN THE WORK

See Yellow Book Title 11.

A. HAZARDOUS MATERIALS

The City represents that it has undertaken an examination of the site of the Work and has determined that there are no hazardous substances, as defined below, which the Operator could reasonably encounter in its performance of the Work. In the event the City so discovers hazardous substances, the City shall evaluate the potential impact of such hazards and coordinate with the Operator to commence work in a manner that avoids such hazards. Specifically, the City has reviewed its records concerning the Properties and has not identified the presence of hazardous substances.

In the event the Operator encounters any materials reasonably believed to be hazardous substances which have not been rendered harmless, the Operator shall immediately stop Work in the area affected and report the condition to the City, in writing. For purposes of this Agreement, "hazardous substances" shall include asbestos, lead, polychlorinated biphenyl (PCB) and any or all of those substances defined as "hazardous substance," "hazardous waste," or "dangerous or extremely hazardous wastes" as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA), and shall also include materials regulated by the Toxic Substances Control Act (TSCA), the Clean Air Act, the Air Quality Act, the Clean Water Act, and the Occupational Safety and Health Act. The Work in the affected area shall not, therefore, be resumed except by written agreement of the City and the Operator, if in fact materials that are hazardous substances have not been rendered harmless. The Work in the affected area shall be resumed only in the absence of the hazardous substances or when it has been rendered harmless or by written agreement of the City and the Operator.

The Operator shall not be required to perform Work without consent in any areas where it reasonably believes hazardous substances that have not been rendered harmless are present.

B. EMERGENCY FIELD CHANGE ORDERED WORK

See Yellow Book Title 11.

28 ARTICLE 28. DIFFERING SITE CONDITIONS

See Yellow Book Title 11 and Title 14.

29 ARTICLE 29. DELAYS AND EXTENSIONS OF TIME

See Yellow Book Title 6.

30 ARTICLE 30. COMPLETION, ACCEPTANCE AND FINAL INSPECTION

See Yellow Book Title 20.

A. Notice of Mechanical Completion

When the Operator believes that it has achieved Mechanical Completion, the Operator shall deliver to the City the Mechanical Completion Checklist certifying that all conditions to Mechanical Completion have been satisfied. If the City rejects the Operator's Mechanical Completion Checklist, the City shall respond with twenty (20) business days in writing giving its reason, in reasonable detail, for such rejection and the Operator shall take appropriate corrective action. Should the City fail to reject the Operator's claim of achieving Mechanical Completion with twenty (20) business day of receiving the Mechanical Completion Checklist, the Operator shall be deemed to have achieved said Milestone. Any dispute between City and Operator with respect to Operator's achievement of Substantial Completion resolved in accordance with Section 28 of the Agreement entitled "Disputes".

B. Notice of Substantial Completion

See Yellow Book Title 19.

C. Notice of Final Acceptance

See Yellow Book Title 20.

31 ARTICLE 31. WARRANTIES

A. LIMITED WARRANTY OF THE WORK

For a period of one (1) year following Substantial Completion (the "*Warranty Period*"), the Operator warrants that the materials used, and the equipment furnished shall be new and of good quality unless specified to the contrary. The Operator further warrants that the Work shall in all respects be free from material defects not permitted by the Specifications and shall be in accordance with the requirements of the Contract Documents. Neither the final certificate for payment nor any provision in the Contract Documents shall relieve the Operator of responsibility for defects or faulty materials or workmanship.

1. **WARRANTY CLAIMS.** The City shall make any warranty claims in writing to the Operator prior to the expiration of the Warranty Period. In the event the City makes a valid warranty claim, the Operator shall remedy, at its sole cost, the defects or subcontract or otherwise arrange for a third party to repair, correct or otherwise cure, the defective construction or installation on which such warranty claim is based. Upon completion of the warranty work, the Operator will submit to the City written notice of the same (a "*Warranty Work Completion Notice*"). If the City is unsatisfied with the warranty work repairs, the City will, within twenty (20) business days after the receipt by the City of such Warranty Work Completion Notice, reject the warranty work and provide written detail of the reasons for the rejection, as reasonably determined by the City. In the event the Operator fails to promptly undertake and prosecute all reasonable actions to correct defective or nonconforming work as required hereunder, the City may correct such defect or nonconforming work at the Operator's expense.
2. **NON-VALID WARRANTY CLAIM PROCESS.** Should a warranty claim be determined to be invalid by the Parties, the Operator shall provide the City with a detailed synopsis of the issue and a cost estimate to remedy said issue per the process outlined in Exhibit B – Asset Management - Operations and Maintenance Special Conditions.

- B. WARRANTY EXCLUSIONS.** Notwithstanding anything to the contrary set forth herein, the Operator specifically excludes from the Warranty, related to the Generating Facility, Electric Vehicle Charging Equipment, and any additional scope of work, any defects caused by or resulting from any defects caused or

made worse by: (A) use by the City beyond the scope contemplated in its operating manuals or technical specifications delivered to the City by the Operator; (B) alterations or repairs made after Final Acceptance by any person (other than the Operator or its Subcontractors) without the Operator's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed; (C) the negligence, improper maintenance or improper operation by anyone other than Operator or its Subcontractors; (D) normal wear and tear or deterioration that does not exceed what would reasonably be expected based on the length of time since Final Acceptance; or (E) Loss or damage that results from a Force Majeure event.

C. THIRD PARTY WARRANTIES.

To the extent assignable, the Operator hereby assigns to the City all warranties made by third parties, including OEMs, Suppliers and Subcontractors, with respect to all System Components, module mounting systems and Subcontractor services, if any, (collectively, the "*Third Party Warranties*"), including the manufacturer's warranties as provided with the Design Submittal Package. The City acknowledges that, upon assignment of third party warranties by the Operator: (i) the Operator shall have no liability or responsibility for honoring any such Third-Party Warranties; and (ii) the City shall be responsible for knowing the terms and conditions of any such Third-Party Warranties and enforcing the same. The Operator's responsibilities for managing Third Party Warranties and potential costs outside the Warranty Period are outlined in Exhibit B – Asset Management - Operations and Maintenance Special Conditions.

D. WARRANTY INSPECTIONS AFTER ACCEPTANCE

The City and the Operator together shall make a warranty inspection approximately eleven (11) months after the date of the Substantial Completion. The City shall schedule and so notify all parties concerned of these inspections.

Written punch lists and reports of this inspection shall be made by the Operator and forwarded to the City within twenty (20) business days after the completion of the inspection. The punch list shall itemize all warranty items, prior punch list items still to be corrected or completed and any other requirements of the Contract Documents to be completed which were not waived by final acceptance because they were not obvious or could not reasonably have been previously observed. The Operator shall immediately initiate such remedial Work as may be necessary to correct any deficiencies or defective Work shown by this report and shall promptly complete all such remedial Work in a manner satisfactory to the City.

If the Operator fails to promptly correct all deficiencies and defects shown by this report, the City may do so, after giving the Operator twenty (20) business days written notice of intention to do so. The City, acting by and through the City, shall be entitled to collect from Operator all costs and expenses incurred by it in correcting such deficiencies and defects.

32 ARTICLE 32. TIME OF COMPLETION

See Yellow Book Title 6.

33 ARTICLE 33. CITY'S RIGHT TO DO THE WORK; TEMPORARY SUSPENSION OF WORK; DELAY; DAMAGES

See Yellow Book Title 6.

EXHIBIT A

CONSTRUCTION SPECIAL CONDITIONS

Attachment 2 - Scope of Work

The Parties recognize and agree that this is scope of work exhibit covers various types of solar Generating Facilities and EV Charging Equipment. This Exhibit is intended to represent a generic Scope of Work and the items contained herein may not apply to all Generating Facilities or EV Charging Equipment. The Parties acknowledge the characteristics of a specific Property may require changes in these scope requirements or the addition of other scope requirements, and the final design and Scope of Work for each Generating Facility or set of EV Charging Equipment will be set forth in the approved Design Submittal Package.

1. General Conditions

- a. The Operator shall conduct a pre-design and pre-construction walk at each Property to identify any potential issues (i.e., trees, irrigation, etc.) or site conditions that impact design and construction activities. In addition, the Operator shall identify and document existing conditions and/or damage at the Property. The Operator shall not be responsible for upgrading and/or repairing areas of the Property with existing damage unless such work is explicitly included in the approved Design Submittal Package.
- b. The Operator is responsible for all handling of equipment including material unloading, lifting, and mobilizing as required to complete the work. The Operator shall determine required delivery dates according to construction schedule.
- c. The Operator is responsible for keeping the construction area clean, and removing all construction related debris, trash, and recyclables, including but not limited to, module packaging.
- d. The Operator shall coordinate site access, site staging areas, permissible storage areas, 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.
- f. The Operator shall protect all existing finish work from damage during mobilization, installation and demobilization. Should the Operator cause damage to any property of the Site, the Operator is responsible for curing damage.
- g. All temporary rest rooms, power, and potable drinking water for the site are the responsibility of the Operator.
- h. 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 construction will be the responsibility of the Operator.
- i. If hazardous materials are encountered during construction, the Operator will immediately stop work in the area affected and report the condition to the City.
- j. The Operator shall provide legal offsite disposal for all construction waste resulting from this Scope of Work. The Operator shall be required to comply with the City's Executive Order 115 requiring the disposal of all non-hazardous solid waste at the Denver-Arapahoe Disposal Site landfill. This construction waste includes, but is not limited to:
 - i. Removed/demolished equipment, components and systems.
 - ii. Trash and debris.
 - iii. Cardboard boxes and packing materials.
- k. The Operator shall provide project management, scheduling, oversight, and quality control procedures associated with its scope throughout project duration.

- l. The Operator shall provide written bi-weekly construction updates.
- m. Work hours will comply with local ordinances however it is assumed that work may proceed between 7am and 7pm on Monday through Saturday.
- n. The Operator will ensure that any dysfunctional solar panels not returned to manufacturer and needing disposal will be recycled by a qualified recycling vendor.

2. Safety

- a. The Operator is 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 Operator shall provide the City with a site-specific safety plan prior to commencing Work.
- b. The Operator shall report any accidents in writing to the City within 24 hours.
- c. The Operator shall meet all safety standards required by OSHA, and AHJ.
- d. The Operator shall conduct weekly and/or daily Job Hazardous Analysis in conjunction with “toolbox talks” on applicable subject matter based on site conditions.

3. Development Phase Work

Upon Notice to Proceed to Commence Development, the Operator shall commence development work (“*Development Phase Work*”) for each Property that will ultimately determine the final Specifications and costs of constructing Generating Facilities or EV Chargers at each Property. This Development Phase Work will include the following deliverables, as necessary and applicable to the Project type for each Property:

- a. Coordination and design with the Utility Provider and the City for interconnection applications and studies necessary to determine the design, infrastructure upgrades, and interconnection costs for the Generating Facility, and additionally for EV Charging Equipment, as applicable.
- b. Title work to identify any known easements for ground mount or canopy sites
- c. Private utility locates as needed
- d. Survey for canopy and ground mount sites
- e. Compliance with applicable DPR requirements for parks appropriate for this phase
- f. Pull test or geotechnical study as needed to confirm soils conditions and foundation design and costs.
- g. Structural analysis of roof structure for rooftop Generating Facilities
- h. Drone surveys of rooftop project sites
- i. Manufacturer’s warranty review of rooftop material and pre-inspections, as needed.
- j. Coordination with the Utility Provider as needed regarding community solar programmatic requirements
- k. ESA Phase One studies, if required by the City or Authority Having Jurisdiction.
- l. Planning and Zoning pre-application submittals, coordination, and approval of the project concept for the Generating Facility and EV Charging Equipment, if applicable, on the Property
- m. Engagement with City staff, site hosts, and other community groups as needed to secure approval and support of Generating Facility locations and designs.

The Parties agree that during the development phase additional development work may become necessary based on unforeseen circumstances, planning and zoning requirements for specific sites, City requests or requirements, etc. Should this be the case, these additional scope items and associated costs will be added to the Agreement through a Change Order.

4. Design Phase Work and Cost Proposal

Upon Notice to Proceed to Commence Design, the Operator shall commence design engineering work (“*Design Phase Work*”) in order to provide the City a Design Submittal Package and Cost Proposal for each Generating Facility or set of EV Charging Equipment. The City may approve alternatives to any system basis of design.

a. General Basis of Design

- i. Codes and Standards applicable to each Generating Facility shall be identified during the Development Phase, and will conform with site-specific AHJ and Site Host requirements in effect at the time of Design Phase NTP
- ii. Materials and Key Equipment
 1. Aluminum conductors shall be specified for certain wiring runs as appropriate
 2. Unpainted Electric Metallic Tubing (EMT) will be utilized for exterior conduit runs
 3. Schedule 40 PVC will be utilized for underground conduit runs
 4. Bifacial modules shall be specified for all ground mount and parking canopy systems (subject to availability), and monofacial modules shall be specified for all rooftop systems
 5. Electrical equipment and components shall be UL listed or carry equivalent listings from a Nationally Recognized Testing Laboratory (NRTL) relevant to their intended use

b. EV Charging Equipment Basis of Design

The Operator shall design the EV Charging Equipment systems in accordance with the Utility Provider’s EV charging interconnection requirements. The EV Charging supply infrastructure may or may not be part of the Utility Provider’s EV Supply Infrastructure (“*EVSI*”) program. Under the EVSI program, the Utility Provider will pay for, install, own and maintain the EV charging infrastructure up to the charging station.

- i. EV Charging Equipment shall have a separate interconnection from the Generating Facility.
- ii. The EV Charging Equipment is intended for use by the general public
- iii. The EV Charging Equipment shall be networked
- iv. The type of EV Charging Equipment shall be **Level 2 Dual Port**
- v. The EV Charging Equipment will not include any functionality to accept payment for usage
- vi. The EV Charging Equipment shall be mounted as shown in the Design Submittal Package
- vii. The manufacturer and model of the EV Charging Equipment shall be provided in the in the Design Submittal Package.
- viii. Each EV Charging Equipment shall accommodate **2 Cars Per Station**
- ix. EV Charging Equipment parking stalls shall be formally designated by the Operator with signage and/or restriped for EV Charging Equipment use.
- x. The City may approve alternatives to the EV Charging Equipment Basis of Design

c. Solar Canopy Basis of Design

- i. Canopy shall follow grade of parking lot

- ii. Canopy design shall not modify or interfere with existing ADA accommodations
- iii. Structure Design
 - 1. I-beam column or HSS Steel
 - 2. Beam or open truss
 - 3. Purlin members mount to column and beams
 - 4. Modules mount to purlin members
 - 5. Permeable (not water tight)
 - 6. Snow guard along bottom edge for single tilt canopies only
 - 7. No decking, gaskets, gutters, or downspouts
- iv. Structure Geometry
 - 1. Canopies covering double rows of parking in the middle of a parking lot shall be dual tilt canopy system designs with inclines ranging from 1 – 5 degrees. Canopies covering single rows of parking spaces on the edge of parking lots that extend over adjacent non parking property shall be single tilt designs with inclines up to 5 degrees.
- v. Module Layout
 - 1. Shall either be in portrait or landscape orientation
- vi. Structure Height
 - 1. The minimum height as measured from the ground (at the foundation location) to the bottom of the truss structure shall be 10'6", unless a lower clearance is approved by the City
- vii. Structure Foundations
 - 1. Foundations will be based on Geotech report findings
 - 2. 2-3' raised piers with rounded tops
- viii. Structure Finish
 - 1. Galvanized purlins and end caps
 - 2. High grade paint and primer applied to columns and beams
- ix. Electrical
 - 1. Inverters shall be mounted on canopy posts
 - 2. All above ground conduit runs will be mounted to the exterior of the canopy structure and/or building
- x. Canopy Lighting
 - 1. Fixture specifications that meet current code and AHJ requirements to be provided with Design Submittal Package
 - 2. Lighting sensors and controls are excluded from the base design
- xi. The City may approve alternatives to the Solar Canopy Basis of Design

d. **Rooftop System Basis of Design**

- i. Generating Facilities located on flat roofs (roofing systems with slopes of 5° or less) shall utilize ballasted mounting systems where possible

- ii. All rooftop system designs shall minimize the use of mechanical attachments and fasteners to the extent possible
 - iii. All rooftop system design and installation will follow roofing manufacturers' requirements to maintain existing roof warranties, unless those requirements are waived by the Site Host.
 - iv. Conduit runs from the rooftop to the electrical room will be mounted on the exterior of the building and will be unpainted.
 - v. In addition to relevant zoning, code, and product application requirements, module layouts shall also incorporate industry best practices regarding roof obstruction setbacks and shade avoidance
- e. Ground Mount System Basis of Design**
- i. Ground mounted Generating Facilities shall utilize either fixed or single-axis tracking mounting systems as best suited to site-specific conditions and objectives
 - ii. Ground mounted systems will include a 20' wide access road from the site entrance to the point of interconnection equipment
 - iii. Any fencing required by NEC shall consist of chain link fence
- f. Security System Basis of Design**
- i. The Operator is in no way responsible for the design, installation, or maintenance of any security system. However, should the City decide to install a security system on a Property that attaches to a Generating Facility structure or other structure constructed by the Operator, the Operator shall reasonably facilitate this installation, which will be performed by others.

5. Construction Phase of the Work

Upon Notice to Proceed to Commence Construction, the Operator shall commence all construction activities per the Construction Schedule including but not limited to the following.

a. Permitting

- i. The Operator shall apply for, and secure all Permits necessary for the construction and interconnection of the Generating Facilities and EV Chargers. All applicable electrical, civil and structural plans sets will be stamped by a licensed Colorado Engineer. The Operator to obtain all required Permits required by the AHJ prior to commencing construction.

b. Procurement and Mobilization

- i. The Operator shall be responsible for the construction survey as needed to locate and install all electrical equipment necessary for operation and interconnection.
- ii. The Operator shall be responsible for procurement of all equipment necessary for operation and interconnection of the Generating Facility and EV Chargers where applicable. All materials supplied by the Operator must be new and in an unused condition.
- iii. The Operator shall field verify all existing conditions and dimensions and shall perform all surveying and measurements as needed. It is the Operator's responsibility to inform the City of any discrepancies of the proposed system size, including but not limited to, physical or electrical constraints.
- iv. All Equipment shall be installed in accordance with manufacturer's instructions and approved Design Submittal Package.

- v. The Operator will determine the shipping address for the Property and Property access for tractor trailers and shipments. The Operator will store material on the Property in areas that will be designated on the site plan. The City may modify the site plan or otherwise require the Operator to relocate storage areas.
- vi. The Operator shall be responsible for the proper security of all the work and equipment and materials as may be necessary to secure the work.
- vii. A temporary project sign and address will be installed near the Property entrance to identify the shipping entrance(s). For work in parks, the Operator shall not install entrance signage in a manner that may damage or harm trees, or damage irrigation. The Operator shall coordinate with DPR and the City Forester for signage installation approval for parks.
- viii. The Operator shall obtain standard manufacture warranty durations as part of equipment procurement and shall not be responsible for extended equipment warranties. The Operator shall not be subject to any Buy American requirements for equipment or material.
- ix. Single mobilization and unrestricted access to the project site during construction. Additional mobilizations are subject to Change Order.
- x. For work in parks, the Operator must comply with DPR Specification and Standards including tree protection and fencing requirements throughout the duration of the Term.

c. Civil Installation, where applicable

- i. The Operator shall construct any civil work, if applicable, per AHJ requirements and approved Design Submittal Package.
- ii. The Operator shall engage a licensed Civil Engineer to develop a stamped site civil plan that covers erosion controls measures, access road construction, and other civil related tasks.
- iii. Clearing/Grubbing – the Operator shall clear the site as required for construction of the Generating Facility.
- iv. Erosion and Sediment Control – the Operator shall provide sediment and erosion control during and after construction in accordance with project permits, local and state laws and regulations, and a civil engineering plan.
- v. Access road shall be constructed per Civil Engineering plans, as applicable.

d. Ground Mount Mechanical Installation

- i. The Operator shall procure all posts and racking materials.
- ii. The Operator shall be responsible for construction survey to locate the ends and center of each module row based on predetermined block corners.
- iii. The Operator will install foundations as determined by the approved structural engineering documents.
- iv. All foundations that do not reach the established embedment depth must be recorded including location and actual embedment depth achieved.
- v. Foundation designs will be based on the findings of the Geotechnical study and/or pull tests completed during the development phase. Foundation designs will be included in the Design Submittal Package for each ground mounted Generating Facility and the associated Cost Proposal shall reflect this design. The City agrees that the Operator could discover special soil or underground conditions that could not be reasonably discovered during the Development Phase Work that require the excavation of below grade obstructions, pre-drilling, concrete foundations,

or longer foundations. Should this situation arise, the Operator will provide the City with an alternative foundation design and equitable price adjustment (Change Order) with required professional engineering approval for these cases.

- vi. Install structural racking per manufacture specification and approved structural plan set.
- vii. All connections shall be torqued and marked per equipment specifications.
- viii. Install modules per manufacture specification and structural plan set including required bonding.

e. Parking Canopy Mechanical Installation

- i. The Operator shall be responsible for construction survey of foundation and column locations
- ii. The Operator will install foundations as determined by the approved structural engineering documents.
- iii. Foundation designs will be based on the findings of the Geotechnical study completed during the development phase. Foundation designs will be included in the Design Submittal Package for each parking canopy Generating Facility and the associated Cost Proposal shall reflect this design. The City agrees that the Operator could discover special soil or underground conditions that could not be reasonably discovered during the Development Phase Work that require the excavation of below grade obstructions, spread footer foundations, or greater foundation depths. Should this situation arise, Operator will provide the City alternative foundation design and equitable price adjustment (Change Order) with required professional engineering approval for these cases.
- iv. Install columns, canopy structure and module support components per manufacture specification and approved structural plan set.
- v. All connections shall be torqued and marked per equipment specifications.
- vi. Install modules per manufacture specification and structural plan set including required bonding.

f. Rooftop Mechanical Installation

- i. The Operator shall be responsible for roof survey to determine optimal array locations
- ii. The Operator will install systems as determined by the approved engineering documents.
- iii. Install racking structure, ballast and/or mechanical attachments where applicable, secure modules to the structure, and install bonding per manufactures' specifications and approved racking plan set.
- iv. All connections shall be torqued and marked per equipment specifications.

g. Site Clearing and Remediation/Reseeding/Landscape Restoration

- i. The City shall ensure selected sites are clear of equipment and other materials on the Properties that impact the Operator's ability to perform its scope of work prior to the commencement of construction activities. All vegetation clearing/grubbing and site remediation shall be the responsibility of the Operator. The Operator shall perform this work in accordance with the Authority Having Jurisdiction requirements and approved Design Submittal Package. For work performed in parks, the Operator shall comply with DPR Standards and Specification regarding landscape restoration requirements.

h. Electrical System Installation

- i. The Generating Facility and EV Charger electrical designs will comply with the AHJ adopted National Electric Code (NEC) and Utility Provider requirements.

i. Solar Data Acquisitions System (DAS)

- i. The DAS shall be an Also Energy web-based, revenue meter grade, data monitoring and support system registered to the City. This system is provided with a local communications device that has data back-up capability and serves as a temporary onsite data storage device. The data will be transmitted via the internet to the monitoring service provider's data servers for long-term storage accessible via a web-based user interface. The monitoring system will be able to provide system performance data to City staff on a password access basis. The system will provide information of energy output and carbon offset on a real time and cumulative basis. Some limited customization of the power viewer web screen is provided in the basic system package. Further customization is available for the added cost for software designers and web designers. The DAS system will, at a minimum, provide the Utility Provider required functionality as outlined in the Interconnection Agreement. Each Generating Facility will have a distinct DAS system located at the array, which will include the following:

- (1) NEMA 4 Enclosure
- (2) Data Logger
- (3) CT Based Revenue Grade Meter
- (4) Inverter Direct Monitoring
- (5) Cellular modem or Ethernet for data connection
- (6) A Meteorological Station consisting of the following:
 - (7) One (1) Ambient Temperature Sensor (as applicable by project size)
 - i. One (1) Cell Temperature Sensor
 - ii. One (1) Pyranometer
 - iii. Administrative access and all login rights assigned to the City
- (8) Publicly accessible web-based dashboard functionality

j. Signage

- i. Signs shall be installed to meet requirements of the codes, fire department, Utility Provider, and other regulatory requirements. Signs shall be as shown on the drawings.
- ii. Outside of requirements of codes, fire department, Utility Provider, and other regulatory requirements Operator may install temporary construction or permanent signage per Attachment 1 General Conditions, except as prohibited by DPR Specifications and Standards.

k. Utility Provider Interconnection and Requirements

- i. Final interconnection for drawings will be provided to the City by the Operator in the Design Submittal Package. Utility connections shall meet all applicable Utility Provider's standards and procedures.
- ii. The Utility Provider will provide and install a revenue grade energy production meter for each Generating Facility that will determine REC payments and bill credit amounts to each Subscriber.
- iii. The EV Charger system will have a distinct, separate interconnection from the Generating Facility.
- iv. The Operator shall be responsible for coordinating and scheduling all interconnection related design and installation work with the Utility Provider and the City.

- v. The Utility Provider will provide written approval of the interconnection and the Permission to Operate. Costs for Utility Provider line extensions, transformers and other interconnection gear, and witness tests, are to be paid by the City directly to the Utility Provider.

l. Fencing

- i. When applicable, the Operator shall furnish and install fencing compliant with the current jurisdictionally adopted National Electric Code (NEC). Fencing for ground mount sites is assumed to be 7' in height and chain link unless otherwise noted on drawings in the Design Submittal Package.

m. Construction.

- i. The Operator shall construct the Generating Facilities and EV Charging Equipment according to City-approved Design Submittal Package and pursuant to schedules approved by the City. The Operator will coordinate with the City to mitigate any impacts construction may have on existing operations at the Properties. The City will provide adequate access to the Properties to allow for a single mobilization to construct the Generating Facilities. Once constructed, the Operator shall not alter, add to, remove, or demolish the Generating Facilities or other related improvements without City approval.

n. Irrigation.

- i. All Operator work shall comply with DPR Specifications and Standards and shall be conducted in a manner to avoid damage to irrigation lines and interruption of watering schedules. DPR may require the Operator to design or redesign installation to avoid damage or interruption regarding irrigation. Any repair or restoration shall comply with DPR Specifications and Standards.

6. Generating Facility and EV Charger Commissioning:

The Operator will commission the Generating Facility and EV Charging Equipment and provide the City with a comprehensive commissioning report. The commissioning report shall contain the following:

a. Generating Facility

- i. Mechanical Torque Spot Check
- ii. DC Insulation Resistance Test
- iii. DC Polarity & Torque Test
- iv. AC Insulation Resistance Test
- v. AC Polarity & Torque Test
- vi. Electrical Ground Continuity Test
- vii. I-V Curve Tracing
- viii. Data Acquisition System (DAS) Test
- ix. Module Level Power Electronics Manufacturing Commissioning (as applicable)
- x. Performance Test
- xi. Manufacture Commissioning Requirements

b. EV Charging Equipment

- i. Commissioning per manufacturer requirements

7. Turnover Package

The Operator will provide City with a “turnover package” that includes the following documents: (All documents shall be provided in digital format only).

- a. Copies of passed inspection documents from the AHJ
- b. Utility Provider Incentive documentation
- c. Stamped engineering documents
- d. Serial numbers for modules
- e. Flash test data of modules
- f. Serial numbers of inverters
- g. As-Built drawings updated to show changes from the approved Design Submittal Package.
- h. Commissioning Report
- i. Performance Test Report
- j. Permission to operate certificate from the Utility Provider
- k. Serial numbers for EV Chargers as applicable
- l. City’s manuals and manufacturer’s data sheets for all equipment used
- m. Copies of all manufacturer’s warranties
- n. Operating and maintenance instruction manuals

EXHIBIT A

CONSTRUCTION SPECIAL CONDITIONS

Attachment 3 - Completion Checklists

Mechanical Completion Acceptance Checklist

Upon execution of this document, the Generating Facility and/or EV Charging Equipment referenced below shall be considered to have achieved the Mechanical Completion milestone.

Project Name:

Equipment and Installation

- Racking system is fully installed
- All solar modules have been securely fastened to the racking system
- All inverters have been securely fastened to their permanent support structure
- Racking, modules and inverters are mechanically installed consistent with approved Design Submittal Package
- EV Charging Equipment and mounting system are physically installed in the location intended for permanent use, as applicable
- Fence and access gate is fully constructed, if applicable
- Civil work is complete, as applicable
- Access Road is complete, as applicable
- Project site is clean and tidy

Project Walkthrough

- The Operator and the City have completed a walkthrough and identified additional punch list items, if any

Punchlist Items, if any, to address for Substantial Completion

- _____
- _____
- _____
- _____

CITY:

Signature:
Name:

Title:

OPERATOR:

Signature:
Name:

Title:

Substantial Completion Acceptance Checklist

Upon execution of this document, the Generating Facility and/or EV Charging Equipment referenced below shall be considered to have achieved the Substantial Completion milestone.

Project Name:

Equipment and Installation

- Mechanical Completion has been achieved
- Solar and EV Charging Equipment systems are mechanically, electrically, and structurally constructed
- Installation is consistent with approved Design Submittal Package and Change Orders
- All equipment installed in a workmanlike fashion and securely fastened
- Site is clean and tidy
- The Operator has assigned to the City all OEM and Supplier's warranties
- The Operator has provided a digital copy of each warranty to the City

Permitting Documentation

- The Operator has provided the City with proof of the passed AHJ inspection(s)

Utility Provider Documentation

- The Operator has uploaded passed inspection cards to Utility Provider

Project Walkthrough

- The Operator and the City have completed a walkthrough and identified additional punch list items, if any

Specifications and Standards for Parks (as applicable)

- The operator has conferred with DPR, completed the required walkthroughs, and complied with DPR Specifications and Standards

Punchlist Items, if any, to address for Substantial Completion

- _____
- _____
- _____
- _____
- _____
- _____

CITY:

Signature:

Name:

OPERATOR:

Signature:

Name:

Title:

Title:

Final Acceptance Checklist

Upon execution of this document, the Generating Facility and/or EV Charging Equipment referenced below shall be considered to have achieved the Final Acceptance milestone.

Project Name:

Equipment and Installation

- Substantial Completion has been achieved
- Installation is consistent with approved Design Submittal Package and Change Orders
- System has passed inspection by all Authorities Having Jurisdiction
- All debris, equipment and surplus materials have been removed from the Site is clean and tidy
- Solar Data Acquisition System is installed and operating
- Utility Provider line extension and interconnection equipment installation have been completed

Utility Provider Documentation and Meters

- Solar production meter has been installed and is functioning properly
- Utility Provider has issued permission to operate

System Commissioning and Operation

- Solar commissioning Performance Test has successfully passed.
- EV Charging Equipment commissioning completed consistent with manufacture requirements
- Commissioning report provided to City in digital format
- Generating Facility is installed and producing electricity.

Site Re seeding/Reclamation/Landscape Restoration

- Site reclamation required by the Authority Having Jurisdiction for permitting approval has been completed.
- All construction related damage or alteration to the pre-construction landscape has been mitigated and reseeded.
- For parks, landscape restoration requirements shall apply in accordance with DPR Specifications and Standards.

Specifications and Standards for Parks (as applicable)

- Substantial completion has been achieved
- Deficiencies identified by DPR have been resolved

Final Walkthrough and Training

- The Operator and the City have completed a final walkthrough

Turnover Package

- Has been delivered to the City

Punchlist Items

- All items have been completed by the Operator or waived by the City

CITY:

Signature:

OPERATOR:

Signature:

Name:

Name:

Title:

Title:

EXHIBIT A**CONSTRUCTION SPECIAL CONDITIONS****Attachment 4 – Generating Facility Commissioning Checklist**

PREREQUISITE CHECKLIST	
These functional test procedures have been reviewed and approved by installing contractors.	
Review design documents and specifications. Verify installation:	
	Includes equipment tagging and identification
	Meets all specification requirements
	Provides accessibility for service and maintenance of all components
The following have been started up and completed startup reports and prefunctional checklists submitted and approved by McKinstry Commissioning Authority. Equipment is operational and ready for functional testing:	
	Modules and RSD Equipment (if applicable)
	Inverter(s)
	Data Acquisition System
	All Commissioning observations items previously identified for this equipment have been corrected.

INSPECTION TESTS

TEST #1 - AC	
	Inverters have been securely fastened to their mounting system.
	Inverter is configured in correct mode per plan detail (parallel or MPPT).
	Utility AC disconnect can be locked in the 'off' position only.
	Inverter protection settings comply with local regulations.
	Inverter type, serial numbers, and power match the system design documents.
	DC to AC ratio (low): The total module DC nameplate per inverter is at least 1.0.
	DC to AC ratio (high): The total module DC nameplate per inverter complies with manufacturer warranty maximum.
	Inverter can withstand maximum voltage (Voc) and current (Isc) of the array.
	Means of isolating the inverter are provided on the AC side.
	Isolation and switching devices are connected such that PV installation is wired to the "load" side and the public supply to the "source" side.
	Inverters installed according to construction drawings
	Inverters have been grounded.
	Inverter conductor termination torque marks checked.
	Inverter wires properly color coded and labeled.
	Inverter wires protected from damage.
	Inverter free of moisture, debris, rust, damage.
	Inverter fuse ratings match construction drawings and are in place, checked for blown fuses.
	Inverter seals have been checked.

TEST #2 - DC

	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.
	DC components rated for continuous DC operation.
	All DC components rated to operate at Voc STC x 1.25.
	All DC components rated to operate at Isc STC X 1.25
	DC switch disconnect is properly fitted.
	DC cables are adequately protected.
	PV string cables, PV array cables and PV DC main cables have been selected and erected so as to minimize the risk of earth faults and short-circuits
	High voltage DC cabling (> 120 V) is in trenching / not accessible
	PV rated cables have been used as required per plan
	Systems with string over-current protective devices:
	String overcurrent protective devices are correctly fitted and specified to the requirements of IEC 60364.
	Rated for DC operation at the fault energies present
	Rated for operation at Voc STC x # of modules in string x 1.15
	Fuses are verified in closed position.
	Plug and socket DC connectors mated together are of the same type and from the same manufacturer
	Max Power Point Tracker (MPPTs) are balanced as to not cause overloading and clipping on a single MPPT.
	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 Installed according to construction drawings
	DC combiners have been grounded.
	DC combiner conductor termination torque marks checked.
	DC combiner wires properly color coded and labeled.
	DC combiner wires protected from damage.
	DC combiner free of moisture, debris, rust, damage.
	DC combiner seals have been checked.
	DC fuse ratings match construction drawings and are in place, checked for blown fuses.

TEST #3 - ELECTRICAL	
	Disconnects installed according to construction drawings
	Disconnects have been grounded.
	Disconnects conductor termination torque marks checked.
	Disconnect wires properly color coded and labeled.
	Disconnects wires protected from damage.
	Disconnects free of moisture, debris, rust, damage.
	Disconnects fuse ratings match construction drawings and are in place, checked for blown fuses.
	Disconnect seals have been checked.
	Conduit fittings and gaskets checked and tight.
	Conduit secured at proper intervals.
	Dissimilar metals are isolated.

	All electrical system components are protected against weather damage and corrosion.
	Electrical metallic tubing (EMT) or rigid metal conduit (RMC) is used on the roof.
	All components are properly and permanently connected (especially junction boxes and leads).
	All wiring is connected and any bends, are under NEC minimum bend radius limits for the spec'd cable.
	Installed wire and conduit sizes match the plans.
	All electrical building penetrations are permanently flashed or sealed as per plan detail.
	Wiring systems are protected against wind, ice formation, extreme temperatures, and solar radiation.
	Fire stops are installed at all fire barrier penetrations.
	Permanent utility power is connected.
	AC and DC cables are separated.

TEST #4 - GENERAL

	Roof inspections have taken place by manufacturer post installation and letter of approval obtained certifying solar installation is in compliance with roof warranty.
	Project site is clean and free of trash and debris.
	Equipment complies with applicable standards, including IEC 60364-6.
	Equipment is easily accessible for maintenance.
	Module lines are straight and in line with roof features.
	Painting is satisfactorily completed.
	Array skirts are installed acceptably.
	Inverter fences/enclosures are built as planned.

TEST #5 - LABELING

	National Electric Code (NEC) required labeling is present and made from durable materials.
	All circuits, protective devices, switches, junctions, and terminals are properly labeled and have been spot checked against plan.
	Array combiner fuse type and rating is labeled in each array combiner.
	System diagram is displayed on-site in an accessible location as per CEC requirement.
	Inverter protection settings and installer details displayed on site.
	Emergency shutdown protocol is displayed on-site in an accessible location.
	AC and DC isolators are appropriately labeled.
	Any fused disconnect has the fuse type and rating labeled.

TEST #6 - MOUNTING

	The array is ventilated as per the plan detail.
	Array tilt has been measured and matches plan detail.
	The array frame is secured to the building as per plan detail
	All fasteners used on aluminum structures or module frames are stainless or as detailed in plan drawing.
	Steel rack elements are hot-dipped galvanized or better.
	Mechanical and structural systems conform to the plans.
	String layout matches the as-built string diagram.
	Small systems: if no string diagram exists, the string locations are marked on the roof plan.
	Large systems: if no string diagram exists, the McKinstry has been notified.

	Roof attachments have been sealed and installed by an appropriate roofing contractor.
	Any roof damage has been repaired by appropriate roofing contractor.
	Rooftop racking manufacturer drawings have been verified against field installation for ballast weight and location, roof attachment locations and general compliance.
	Ground mount racking manufacturer drawings have been verified against field installation for foundation type, spacing and general compliance.
	Manufacturer bonding and grounding requirements from construction drawings have been verified against field installation for compliance.
	Manufacturer limitations of roof or topography change have been verified against field installation.

TEST #7 - PICTURES

	Arrays (from the front and rear if possible, or at from least 2 angles)
	One close up of module label / nameplate.
	Racking system and connection point flashing detail
	Inverters (installation and name plate with serial numbers)
	Combiner boxes (installation and name plate)
	Disconnects DC and AC with fuse size and model. (installation and name plate)
	Interconnection (meter and service disconnect and metering cabinet)
	Building and fire stop penetrations
	Location of mounted data acquisition equipment and all sensors

TEST #8 - SAFETY

	Electrical design is adapted properly.
	All live parts are adequately insulated/protected.
	Working clearances are satisfactory.
	The system has been properly grounded at necessary locations.
	Surge protection devices are installed as per plan.
	Area of all wiring loops kept as small as possible.
	Array frame equipotential bonding installed to local codes.
	Lockout/tagout procedures are in place.
	Arc shields are installed in AC and DC electrical devices per plan and manufacturer.

EXHIBIT A

CONSTRUCTION SPECIAL CONDITIONS

Attachment 5 – Generating Facility Performance Test

1. Definitions

- A. “**Actual Test Data Set**” means the exported climate and performance data from the Data Acquisition System used in the regression model.
- B. “**Expected Test Data Set**” means the filtered set of data output from the energy model, PVsyst.
- C. “**Minimum Capacity Guarantee**” means the minimum power capacity (i.e. performance level) that the Performance Test results must meet or exceed in order to achieve Final Acceptance, expressed as a percentage.
- D. “**Performance Test**” means the test conducted to demonstrate the performance of the Generating Facility meets or exceeds its Minimum Capacity Guarantee.
- E. “**Performance Test Ratio**” means the ratio of the Expected Test Power at the mean Reporting Conditions vs Actual Test Power at the mean Reporting Conditions, minus some uncertainty.
- F. “**Point of Interconnection**” means the electrical point at which the revenue grade meter is located.
- G. “**Primary Measurement Device**” means any and all equipment required at a minimum to conduct the Performance Test. Instruments are listed in Table 1.
- H. “**Reporting Conditions**” means the filtered set of conditions used for the regression model. See Section 1.7 of this Exhibit for more details.
- I. “**Secondary Measurement Device**” means any and all equipment that may be installed based on project size or application, but is not required to conduct the Performance Test. Instruments are listed in Table 1.

2. Procedure

- A. The Operator will furnish the Performance Test procedure to the City at least thirty (30) Days prior to the start of the Performance Test. The City shall provide any comments on the Performance Test procedure within twenty (20) business Days of receipt of the Performance Test procedure, and the Parties will cooperate in good faith regarding any necessary or appropriate modifications to be made. If the City does not provide any comments on the Performance Test procedures within such (20) business Day period, the Operator shall be deemed to have no comments on the Performance Test procedures.
- B. The procedure shall calculate the system performance based on the criteria outlined in the ASTM E2848 “Standard Test Method for Reporting Photovoltaic Non-Concentrator System Performance”. These steps shall include:
 - (i) Gathering the raw data from the Data Acquisition System. Data from the Primary Instrument class shall be collected at a minimum.
 - (ii) Removal of data points that are likely to contain noise, transient weather conditions, device malfunctions, system limits or other errors.

- (iii) Reduce the dataset by removing the data points that are significant outliers relative to the regression analysis.
 - (iv) Calculate a second regression based on the filtered data.
 - (v) Calculate the final system performance and compare performance to the predetermined operating condition.
- C. The Performance Test report shall include the following document references:
- (i) Specification datasheets and calibration records for all Primary Measurement Devices and their corresponding locations, including locations for field verification.
 - (iii) Field testing procedures (i.e. test duration, frequency).
 - (iv) List of all Secondary Measurement Devices and their corresponding locations.
 - (v) Applicable transformer factory acceptance test certificates.
 - (viii) Instrumentation map showing location of weather stations and all relevant sensors (e.g. back of module temperature sensors, pyranometers, etc.)
 - (ix) PVSyst model and 8760 output documenting the “Expected Test Data Set”

3. Pre-Test Activities

- A. Representatives. The City can designate an authorized representative to observe the Performance Test if desired.
- B. Test Scheduling. Not less than two (2) weeks prior to the date the Operator anticipates it will be ready to conduct the Performance Test, the Operator shall provide notice to the City of such anticipated readiness date. The City and the Operator will thereafter coordinate in good faith to schedule the Performance Test on or as close as possible after such date.
- C. Test Measurements. All test measurement devices shall be fully defined for their make/model, accuracy, calibration and location, as set forth in Table 1 below:

Table 1. Minimum Test Measurement Equipment

Instrument Class	Instrument Type	Orientation
Primary	Secondary Standard or Class I Pyranometer	Plane of Array (POA)*
Primary	Module Cell Temperature	Back of center of central module (location as specified by the drawings)
Primary	Revenue Meter	Located at point of interconnection (City meter - location as specified by drawings and approved by City)
Secondary	Ambient Temperature	On mast at weather station (if applicable)
Secondary	Wind Speed and Direction	On mast at weather station (if applicable)
Secondary	Pyranometer	Global Horizontal on mast with unobstructed view (if applicable)

* Note: For sites with multiple azimuths, a GHI may be installed as a substitute for multiple POA sensors. The GHI data will be transposed to each appropriate POA.

- (i) Instrument Calibration. All Primary Measurement Devices shall have current NIST or equivalent calibration certificates. All calibrations certificates shall be dated no more than one year prior to the commencement of the Performance Test.
- (ii) Performance Test data collection. Data from the Performance Test shall be recorded by the DAS System. The AC output of the Project shall be measured at the revenue grade meter at the Point of Interconnection(s), unless another location was determined as part of the design and installation. The AC output shall be adjusted for any additional losses as deemed necessary to reflect the true AC output at the Point of Interconnection(s).
- (iii) Adjustments. Any adjustments made during the test to the Project or test measurement devices shall be fully documented.
- (iv) Cancellation of Performance Test. Either Party has the right to cancel the test with written justification if it can be shown that test conditions or other reasons are causing erroneous data.

4. Objective

- A. The Performance Test shall verify and demonstrate to the City that the Project has achieved at least the Minimum Capacity Guarantee. The AC power output of the Project shall be measured at the meter(s) installed at the Point of Interconnection(s) within the on-site interconnection facility. Losses between the metered location and the Point of Interconnection(s) will be calculated using mutually agreed calculation methods.

5. Methodology

- A. The Performance Test criteria shall be based on the capacity testing protocol as set forth in ASTM E2848-13.
- B. The Performance Test shall follow the defined process of determining Reporting Conditions and Actual Test Output outlined in ASTM E2848-13.

Table 2. Actual Test Data Set Recording Parameters

For Facilities less than 20 MWac:

Test Duration & and Data Requirements	3 to 6 calendar Days or more as required in order to collect a minimum of 500 data points of which at least 350 filtered data points shall have POA irradiance above 200 W/m ²).
Averaging Interval	2 hr
Sampling Interval	15 minute

6. Actual Test Data Set

- A. The "Actual Test Data Set" shall be obtained as follows:
- (i) The Actual Test Data Set must contain at minimum measurements of plane of the array irradiance, module cell temperature and power output at the revenue meter.
 - (ii) Each data point shall be represented by the average of all Primary Measurement Devices installed on-site.
 - (iii) All recorded data points shall be filtered per section 9.1 of ASTM E2848-13, with the following additional explicit filtering requirements:
 - (a) All data points with POA irradiances less than 200 W/m² will be filtered out.
 - (b) Any data points during a sensor or equipment failure and/or malfunction shall be removed.
 - (c) Data points during times of grid instability or inverter operation off utility-required power factor or off MPPT (clipping) shall be removed.
 - (d) Data points considered outliers due to unstable atmospheric conditions may be removed with City approval.
 - (iv) If after filtering the Actual Test Data Set there are fewer than 500 filtered data points for a Project less than 20MWac, and 750 filtered data points for a Project greater than 20MWac, then the test duration and data collection shall be extended in accordance with the "moving window" provision of section 8.3 of ASTM E2848-13 and the process shall repeat until the Actual Test Data Set requirements are achieved.

7. Reporting Conditions

- A. The "Reporting Conditions" ("**RC**") shall be as defined in section 3.2.4 of ASTM E2848-13, and shall be determined as follows:
- (i) The POA reference irradiance ("**ERC**") shall be determined based on the Actual Test Data Set.
 - (ii) To select the POA reference irradiance, the following steps shall be taken:
 - (a) Determine the median POA irradiance value of the Actual Test Data Set.
 - (b) If the median irradiance value is less than 500W/m² then the recommendations of ASTM E2939-13 section 8.4 shall prevail (i.e. calculate the POA irradiance value that exceeds 60% of the Actual Test Data Set. This shall be the POA reference irradiance).
 - (c) Otherwise the Reporting Condition will be set to the median irradiance value.
 - (iii) The mean, per ASTM E2848-13, module cell temperature of the Actual Test Data Set will be the reference temperature ("**T_{RC}**").
 - (iv) As a Secondary Measurement Device, an ambient temperature sensor may be installed. The mean, per ASTM E2848-13, ambient temperature of the Actual Test Data Set will be the reference ambient temperature ("**T_{ARC}**").
 - (v) As a Secondary Measurement Device, an anemometer (measures wind speed and direction) may be installed. The mean, per ASTM E2848-13, wind speed of the Actual Test Data Set will be the reference wind speed ("**V_{RC}**").
 - (vi) The **E_{RC}**, **T_{RC}**, and **V_{RC}** shall constitute the **RC** for the test.

8. Calculations

A. Calculation of Actual Test Output:

- (i) Calculate the Actual Regression Coefficients per equation (1) or (1a) of ASTM E2848-13 using the Actual Test Data Set. The applicable equation depends on the Primary and/or Secondary Measurement Devices installed.

$$P = E(a_1 + a_2 \cdot E + a_3 \cdot T_a + a_4 \cdot v) \quad (1)$$

$$P = E(a_1 + a_2 \cdot E + a_3 \cdot T_m) \quad (1a)$$

where $a_1, a_2, \text{ etc.}$ are the Actual Regression Coefficients.

- (ii) Calculate the Actual Test Power at the mean Reporting Conditions using the Actual Regression Coefficients per equation (2) or (2a) of ASTM E2848-13 using the Actual Test Data Set. The applicable equation depends on the Primary and/or Secondary Measurement Devices installed.

$$P_{RC} = E_{RC}(a_1 + a_2 \cdot E_{RC} + a_3 \cdot T_{a,RC} + a_4 \cdot v_{RC}) \quad (2)$$

$$P_{RC} = E_{RC}(a_1 + a_2 \cdot E_{RC} + a_3 \cdot T_{m,RC}) \quad (2a)$$

- (iii) The Operator may choose to take recourse to the provision in section 8.3 of ASTM E2848-13 and use the provision of “moving window” as stipulated therein if the City suspects that the data collected is not consistent.

B. Calculation of Expected Test Output: Expected Test Output shall be determined in accordance with ASTM E2848-13 Section 9 in the following manner:

- (i) Create the “Expected Test Data Set”: Run a simulation with PVSyst based on the Project design per the approved construction permit application set. List the major inputs as shown in Table 3 below. This procedure should be repeated for each system connected to an independent power meter.
- (ii) The PVSyst hourly output must contain at a minimum the POA irradiance, the module temperature, inverter energy and energy sent to the grid (GlobInc, Tmod, EOutInv, and EGrid) respectively.
- (iii) Filter the PVSyst hourly output data set to remove with the following:
- (a) POA irradiances below 200 W/m²
 - (b) Inverter is clipping (i.e., **EOutInv** >= 98% * AC Capacity)
- (v) This data now constitutes the “Expected Test Data Set”.

C. Determine Regression Coefficients:

- (i) Calculate the regression coefficients per Equation (1) listed above using the Expected Test Data Set.
- (ii) Calculate the Expected Power at the mean Reporting Conditions using the regression coefficients per Equation (2) or (2a) listed above.

Table 3. PVSyst Inputs and Parameters

Modeling Assumption	Comments
Weather File	TMY3, SolarAnywhere TGY or a meteorological reference file that is provided by City and approved by City's Independent Engineer and financing partners.
Transposition Model	Perez
Site Albedo:	Defined per Project
Orientation Parameters:	Defined per Project
Tilt:	Defined per Project
Pitch:	Defined per Project
Shading Scene:	If Applicable
Horizon:	If Applicable, a horizon is generated by HeyWhatsThat and is input into PVSyst.
Module PAN Files	Per module
Inverter OND Files	Per inverter
Constant Loss Factor U_c	Per application
DC Wiring Ohmic Loss:	1.5%; this can be updated with actual DC voltage drop calculations if provided.
Soiling Losses:	Define monthly soiling values per DNV-GL, Solar Resource Compass
Module Quality Loss (negative value indicates over performance):	Per module PAN file. If no test data is available assume 0.25% of the power tolerance
Light Induced Degradation:	1.0% for Mono-PERC modules 1.5% for Polycrystalline modules
Module Mismatch Loss:	Per module PAN file. If no test data is available assume 1.0%.
IAM Loss: ASHRAE Model (default) $b_0 =$	Per module
AC Wiring Loss :	Defined per Project. This can be updated with actual AC voltage drop calculations if provided.
Step-up Transformer Loss:	If applicable, 1.0% for resistive loss, 0.1% for iron loss unless provided with actual transformer test data.
Year 1 Degradation	Per module. Standard value of 0.5% if unknown.

9. Test Calculations and Results

- A. Raw test data shall be analyzed and reduced to eliminate data points that clearly exhibit a high degree of random error. Causes for eliminating data points shall be defined in the test plan.
- B. The Operator will document all data that is eliminated and provide to the City.
- C. For calculation requirements, reference ASTM E2848-13 Section 9 Calculation of Results.
- D. Test Results shall be summarized in the following table, Table 4

Table 4. Test Results

Description	Nomenclature	Value	Unit
Actual Power at Mean Reporting Conditions	$P_{\overline{RC}}$		kW
Expected Power at Mean Reporting Conditions	$P_{\overline{RC}}^E$		kW
Uncertainty	U_{95}		kW
Performance Test Ratio	$\frac{P_{\overline{RC}} + U_{95}}{P_{\overline{RC}}^E}$		%
Minimum Capacity Guarantee	m	95	%
Test Result		(PASS OR FAIL)	

- E. Calculation of the Performance Test Ratio shall be determined with Equation 3 below:

$$\text{Performance Test Ratio} = \frac{P_{\overline{RC}} + U_{95}}{P_{\overline{RC}}^E} \quad (3)$$

- (i) Results shall be expressed in a percentage

- F. Calculation of the Test Results shall be determined as a Pass/Fail as shown in Equation 4 where the Performance Test Ratio is compared to the Minimum Capacity Guarantee, m , as follows:

$$\text{Performance Test Ratio} \geq (m) \quad (4)$$

10. Test Reporting

- A. The Operator will submit a detailed test report within ten (10) business Days of completion of the Performance Test, whether successful or unsuccessful, to the City consisting of the following:
 - (i) Test procedures (as executed).
 - (ii) Instrument calibration sheets/certificates.
 - (iii) Test data (manual and data acquisition), including post-test measurement uncertainty analysis and comparison to pre-test calculations.
 - (iv) Field notes and observations.
 - (v) Calculations.
 - (vi) Results.
 - (vii) Conclusions.

EXHIBIT A

CONSTRUCTION SPECIAL CONDITIONS

Attachment 6 – Notice to Proceed Template

DATE: Insert Date
TO: McKinstry Essention, LLC
FROM: City of Denver
SUBJECT: Notice to Proceed

In accordance with the Master Operator Agreement between the City and County of Denver and McKinstry Essention, LLC dated _____ this is your Notice to Proceed to Commence Insert Phase Name for the following Generating Facility and Electric Vehicle Charging Equipment, as applicable.

Generating Facility Name:

SRC #:

Sincerely,

Insert Authorized Signatory Name
City and County of Denver

cc:

EXHIBIT A**CONSTRUCTION SPECIAL CONDITIONS****Attachment 7: Labor Rate Table**

McKinstry 2021 Labor Rates

DEVELOPMENT AND ENGINEERING	Hourly Rate
Energy Engineer - Renewables	\$ 140.00
Sr. Energy Engineer - Renewables	\$ 180.00
Program Manager - Renewables	\$ 180.00
Operations Leader - Renewables	\$ 220.00
Project Director - Renewables	\$ 235.00
CONSTRUCTION	
Construction Project Coordinator	\$ 100.00
Construction Project Engineer	\$ 120.00
Sr. Construction Project Engineer	\$ 140.00
Superintendent	\$ 160.00
Project Manager - Construction	\$ 170.00
Sr. Superintendent	\$ 180.00
Sr. Project Manager - Construction	\$ 190.00
Operations Manager - Construction	\$ 240.00
COMMISSIONING	
Commissioning Technician	\$ 115.00
Commissioning Engineer	\$ 145.00
Sr. Commissioning Engineer	\$ 175.00
Commissioning Manager	\$ 210.00
OPERATIONS, ADMINISTRATION & SUPPORT SERVICES	
Business Operations Coordinator	\$ 100.00
Lead Operations Specialist	\$ 115.00
Safety Engineer	\$ 140.00
Safety Program Manager	\$ 190.00
Director of Regional Operations	\$ 240.00
Regional Director - Renewables	\$ 250.00

EXHIBIT B

GENERATING FACILITY ASSET MANAGEMENT SPECIAL CONDITIONS

Attachment 1 – General Conditions

ARTICLE 1. DEFINITIONS

These words and terms are specific to this Special Conditions exhibit but may appear elsewhere in this Agreement. Likewise, words and terms defined in other Special Conditions exhibits and this Agreement may appear in this Special Conditions section.

1. “*Asset Management*” means the services provided by the Operator pursuant to Exhibit B.
2. “*Asset Management Fee*” means the fee charged by the Operator for Asset Management services provided under this Agreement.
3. “*CCR*” means the Colorado Code of Regulations, as amended.
4. “*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 and/or EV Charger to its expected performance if any equipment is not performing as expected, damaged, or deemed defective.
5. “*C.R.S.*” means the Colorado Revised Statutes, as amended.
6. “*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
7. “*Generating Facility Revenue*” shall mean the SRC Subscriber payments and REC Incentive payments made to the Operator.
8. “*Interconnection Agreement*” shall mean the separate agreement to be entered into between the City and Utility Provider providing the terms and conditions by which SRC Producer may interconnect and operate the Generating Facility in parallel with Utility Provider’s electric system at the Solar Garden Site.
9. “*Manufacturer Warranty Management*” shall mean the activity that manages all equipment under manufacturer warranty at the time of service with the objective of reducing costs, coordinating repairs, and facilitating any required paperwork such as Return Merchandise Authorization (RMA) receipts.
10. “*Meter*” shall mean the measuring facility installed by Utility Provider to measure the Photovoltaic Energy produced by the Generating Facilities at the point where the Photovoltaic Energy and the associated RECs change possession from SRC Producer to the Utility Provider.
11. “*OEM*” means the original equipment manufacturers for the System Components as more particularly set forth in the Specifications.
12. “*Photovoltaic Energy*” shall mean the net electric energy generated from the Generating Facility, using solar radiation energy to generate electricity delivered to Utility Provider and measured at the Meter.
13. “*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.
14. “*Renewable Energy Credit*” or “*REC*” shall have the meaning set forth in 4 CCR 723-3-3652.

15. *“REC Incentive”* shall mean the per kWh dollar amount paid by the Utility Provider to the Operator to compensate the Operator for the associated RECs produced by the Generating Facility
16. *“Solar Garden Site”* shall mean the parcel of real property on which the Generating Facility will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Generating Facility. The Solar Garden Sites are more specifically described in Exhibit D to this Agreement, which may be updated by the mutual agreement of the Parties from time to time.
17. *“SRC Credit”* shall mean the dollar amount paid by Utility Provider to each SRC Subscriber as a credit on the SRC Subscriber’s retail electric service bill to compensate the SRC Subscriber for its beneficial share of Photovoltaic Energy and associated RECs produced by the Generating Facility and delivered to Utility Provider from the SRC Producer, in accordance with Rate Schedule SRC of Utility Provider’s Electric Tariffs.
18. *“SRC Subscriber”* shall mean the retail electric service customer of the Utility Provider who: (a) subscribes to a beneficial share of the Photovoltaic Energy and associated RECs produced by the Generating Facility pursuant to a Subscription; (b) has attributed such Subscription to one or more premises served by the Utility Provider; and (c) has entered into a SRC Subscriber Agency Agreement with Operator.
19. *“SRC Subscriber Agency Agreement”* shall mean the agreement entered into between each SRC Subscriber and SRC Producer, in a form substantially the same as the SRC Subscriber Agency Agreement attached hereto as Attachment 4.
20. *“Solar Rewards Community (SRC) Program”* shall mean the Utility Provider’s community solar program.
21. *“Solar Power Subscription Agreement”* shall mean the separate agreement between the SRC Subscriber and Operator, in a form substantially the same as the Solar Power Subscription Agreement attached hereto as Attachment 5.
22. *“Subscription Rate”* shall mean the per kWh dollar amounts paid by the SRC Subscriber to the Operator per the terms of an executed Solar Power Subscription Agreement.

ARTICLE 2. GENERAL CONDITIONS

1. These Asset Management Special Conditions apply only to Generating Facilities. The Operator does not have any Asset Management responsibilities for EV Charging Equipment.
2. The Operator shall be responsible for operating and maintaining the Generating Facilities on the City’s behalf and at the City’s direction in accordance with prudent industry standards and this Exhibit, including making all necessary and appropriate repairs and replacements, and shall keep the Generating Facilities in compliance with the Utility Provider community solar program requirements.
3. The Operator shall provide the City with a list of and contact information for the Operator’s personnel who will access the Properties for purposes of operating and maintaining the Generating Facilities.
4. The Operator shall coordinate site access, permissible parking areas, and hours of operation for subcontractors.
5. 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.
6. 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.

7. 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.
8. 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.
9. For solar canopy Generating Facilities, City or Site Host facilities staff shall be responsible for the keeping the areas under the Generating Facility clear and free of debris and trash as part of their normal facility maintenance duties. For rooftop and ground mounted Generating Facilities, the Operator is responsible for keeping the area within and immediately around the system clear of all scope related debris, trash, and recyclables, and shall not permit rubbish, debris, waste materials, or anything unsightly or detrimental to public health or operations of the Generating Facility to remain on any of the Properties or to be disposed of improperly.
10. The Operator shall not be responsible for parking area snow plowing or removal, or ice mitigation of any kind.
11. The Operator shall only be responsible for the removal of snow off modules from the Generating Facilities to the extent the snow is creating a safety hazard, has the potential to damage the system, or upon request of the City. These snow removal costs will be billed to City on a per occurrence basis.
12. The Operator shall provide the City with a system monitoring and revenue grade metering platform for each Generating Facility as described in this Exhibit B containing a comprehensive view of project and portfolio data.
13. 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 Property or relocate the Generating Facilities to a different location on a Property. 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. System reinstallation or relocation is not included in the scope of work and will be at the City's expense.
14. The Operator shall meet all safety standards required by OSHA and governing local jurisdictions.
15. The Operator is 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.
16. 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 the Exhibits.
17. 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.

ARTICLE 3. UTILITY PROVIDER PROGRAM MANAGEMENT

1. The Operator shall act as the CSG Subscriber Organization as defined in 4 CCR 723-3 § 3877(d), for the purpose operating the Generating Facilities located on the Properties on the City's behalf. As the CSG Subscriber Organization for the Generating Facilities, the Operator shall be responsible for ensuring that

the Generating Facilities are operated in accordance with applicable laws governing community solar gardens, including C.R.S. § 40-2-127 and 4 CCR 723-3 §§ 3875–3883, as may be amended from time to time.

2. The Operator shall perform any and all acts necessary to carry out the duties, responsibilities and obligations to maintain compliance with the Xcel Energy Solar*Rewards Community Producer Agreement for each Generating Facility. The Parties agree that future changes to the Producer Agreement or Xcel Energy community solar program requirement may require a Change Order to this Agreement and adjustment to Operator fees.
3. The Operator shall ensure the Generating Facilities maintain compliance with the Xcel Energy Interconnection Agreement. The Parties agree that future changes to the Producer Agreement or the Xcel Energy community solar program requirement may require a Change Order to this Agreement and adjustment to Operator fees.
4. The Operator shall adhere to Public Utilities Commission (“PUC”) requirements governing the operation of community solar projects. The Parties agree that PUC policy changes may require a Change Order to this Agreement and adjustment to Operator fees.

ARTICLE 4. SUBSCRIBER MANAGEMENT

1. Non-Residential Subscriber Management

- a. The City shall be responsible for identifying and securing non-residential subscriber commitments sufficient to fully subscribe each Project Tranche of community solar projects. The Operator agrees to assist the City in presenting terms and agreements to potential non-residential subscribers. However, the Operator shall not be responsible for non-residential subscriber acquisition. Should the City request the Operator to acquire subscribers, the Operator shall provide the City with a proposal for subscriber acquisition services, and if accepted, this Agreement will be amended.
- b. The City shall set the non-residential subscriber allocation percentages and rates for each Project Tranche of community solar Generating Facilities as outlined in Exhibit D.

2. Income Qualified Household Subscribers

- a. The City may or may not set targets for the Operator to subscribe portions of the community solar projects to income qualified households. These targets shall be outlined in Exhibit D and be specific to each Project Tranche, and the Operator shall agree that the targets and rates are reasonably achievable.

3. Residential Subscribers

- a. The City has not set targets for residential subscribers for Project Tranche #1 projects. On future Project Tranches, the City may or may not set targets for the acquisition and subscription of certain portions of the community solar projects for residential subscribers. If so, these targets shall be included in the amendment authorizing a Project Tranche and will be specific to each Project Tranche so long as the Operator agrees that the targets and rates are reasonably achievable, and the Operator fees shall be adjusted accordingly based upon these targets.
- b. Should the City elect to set targets for residential subscribers, the City shall provide the Operator with a City approved subscriber agreement suitable for residential subscribers.

ARTICLE 5. OPERATIONS AND MAINTENANCE

1. Operator shall provide Operations and Maintenance service as outlined in Attachment 2 of this Exhibit.

EXHIBIT B

GENERATING FACILITY ASSET MANAGEMENT SPECIAL CONDITIONS

Attachment 2 – Scope of Work

1. Subscriber Management

- a. The Operator shall negotiate and enter into Solar Power Subscription Agreements with secured non-residential subscribers utilizing the applicable Solar Power Subscription Agreement form as provided in Exhibit B, Attachment 5. The parties recognize that individual subscribers may require changes to this the form, which must be approved by the City and the Operator prior to the execution of each subscriber agreement.
- b. All subscribers shall sign the Utility Provider's Subscriber Agency Agreement and Data Consent Form with the Operator.
- c. The Operator shall provide all coordination and management of the Generating Facilities to maintain compliance with the Xcel Energy Solar*Rewards Community Solar Program.
- d. The Operator shall be solely responsible for development and management of the Subscriber Management platform.

2. Generating Facility Revenue Collection

- a. The Operator is responsible for SRC Subscriber billing, invoicing, and collection of all Subscription Rate payments per the terms of executed Solar Power Subscription Agreements.
- b. The Operator shall collect all REC Incentive payments from the Utility Provider.

3. Annual Preventative Maintenance Visit

- a. The Operator's O&M technicians will perform a single comprehensive annual Preventative Maintenance (PM) visit to each Generating Facility as part of its ongoing O&M services. In addition to the Preventative Maintenance actions, the Operator's technicians will document and repair minor issues found during the visit so long as the minor repair does not extend the annual preventative maintenance visit beyond two hours.
- b. The Operator shall perform the services during the annual Preventative Maintenance visit per Attachment 2 of this Exhibit.
- c. The Operator may elect to perform a second preventative maintenance visit to Generating Facilities to complete a visual inspection of conditions. No report will be provided unless the Operator identifies Corrective Maintenance issues that should be addressed.

4. Performance Reporting

- a. A report will be provided to the City on an annual basis outlining the Generating Facilities' performance over the course of the previous year. This report will 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).
- vi. This report will be included with the annual preventative maintenance visit report.

5. Ongoing Performance and Alert Monitoring

- a. 24/7 automatic alarms will be set during the Commissioning phase to alert any system underperformance, equipment, or communication failures.
- b. Remote ongoing supervision of the Generating Facility Data Acquisition System (DAS) is included by Operator staff to manage and remedy alerts.
- c. If an alarm and/or alert requires immediate attention that falls outside of Preventative Maintenance scope the City will be notified to determine the appropriate course of action.

6. Minor Maintenance

Minor maintenance issues will be completed during the Preventative Maintenance inspections so long as the work can be completed within the two hours of allotted time for the scheduled site inspection. Should the minor maintenance issued require more time, the City hereby approves up to two additional hours of work to be performed at the current Time and Materials rates set forth in Attachment 6 of this Exhibit. The value of this work will be added to the Operator's monthly fees for operating the Generating Facilities and the Operator shall provide the City with report outlining the work completed. 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.

7. Additional Operations and Maintenance Services

The following services are explicitly not included in the base Asset Management Fee and 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.

- a. Corrective Maintenance: When the Operator or the City identifies a maintenance or performance issue requiring on site response, the Operator shall dispatch O&M technicians as approved by the City to address Corrective Maintenance needs. Following this dispatch, the Operator shall invoice the City and deliver a service report summarizing the time and actions taken to diagnose and perform the Corrective Maintenance, results achieved, and any follow up actions necessary.
- b. Manufacturer Warranty Management.
- c. Service or replacement of any installed equipment that is found to be defective as defined by the Original Equipment Manufacturer (OEM) warranty(s). All costs not covered by the manufacturer's warranty shall be billed to the City at current Time and Materials rates.

- d. Downtime or service trips to repair IT infrastructure and/or IT network(s) for which the Operator has no responsibility.
- e. 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.
- f. Any Extraordinary Maintenance services as defined in the *Definitions* section above that are not reasonably foreseeable from any force majeure incidents, including special, indirect, or consequential damages.
- g. Repair 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 other than caused ordinary use.
- h. Purchase of replacement materials or equipment, if applicable.
- i. 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.
- j. Ongoing cellular, data subscription fees, or equipment upgrades for the Data Acquisition Systems
- k. Vegetation Management - Ground mounted Generating Facilities
 - i. The Operator will 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.

8. Asset Management Exclusions

- a. Maintenance or repair of any Utility Provider gear
- b. Maintenance or repair of any City of Site Host electrical infrastructure beyond the Generating Facilities main disconnect switch.
- c. Vegetation management of all landscaping and plants or trees under and around solar canopies
- d. EV Charging System maintenance or repair
- e. EV Charging System network fees
- f. Extended warranties for equipment
- g. Collection services for past due Subscriber payments
- h. On site security, alarms systems, or prevention of unauthorized access to the Generating Facilities.

EXHIBIT B

GENERATING FACILITY ASSET MANAGEMENT SPECIAL CONDITIONS

Attachment 3 - 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 B

GENERATING FACILITY ASSET MANAGEMENT SPECIAL CONDITIONS

Attachment 4 – SRC Subscriber Agency Agreement

The Parties understand and agree that SRC Subscriber Agreements must be entered into between the Operator, acting as the SRC Producer, and each subscriber, including the City, for each Solar Garden, in a form substantially the same as the following”

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

SRC Subscriber Name: _____

SRC Subscriber Retail Customer Account No.: _____

SRC Subscriber Service Address: _____

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

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

SRC Producer (Subscriber Organization) Name: _____

Solar Garden ID No: _____

Name and Location of Solar Garden: _____

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

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

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

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

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

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

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

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

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

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

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

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

SRC SUBSCRIBER

SRC PRODUCER

By: _____

By: _____

EXHIBIT B

GENERATING FACILITY ASSET MANAGEMENT SPECIAL CONDITIONS

Attachment 5 – Solar Power Subscription Agreement Template

The Parties understand and agree that a Solar Power Subscription Agreement must be entered into between the Operator, acting as the SRC Producer, and each subscriber, including the City, for the Solar Gardens, in a form substantially the same as the following:

SOLAR POWER SUBSCRIPTION AGREEMENT

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

2. DEFINITIONS:

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

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

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

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

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

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

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

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

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

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

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

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

M. “System” means an individual Solar Garden.

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

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

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

3. INSTALLATION AND OPERATION OF SOLAR GARDENS:

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

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

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

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

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

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

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

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

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

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

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

4. PURCHASE AND SALE OF POWER:

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

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

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

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

6. PAYMENT OBLIGATIONS:

A. Any other provision of this Agreement notwithstanding, in no event shall the City's payment obligation for the Agreement be any amount in excess of ___ **DOLLARS AND NO CENTS (\$___.00)** over the Term (the "**Maximum Contract Amount**"), unless this Agreement is amended to increase such amount.

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

C. The Company shall deliver to the City monthly invoices, no later than thirty (30) days after the last day of the production month, stating the amount equal to City's Allocated

Percentage of each Solar Garden's Energy Output for the production month in kWhac. The invoice shall be in form satisfactory to the City. The Parties agree that the Executive Director and the Chief Financial Officer of the Department of Finance may from time to time change the format and content of the monthly invoice to be submitted by the Company. The City is authorized to make payments to the Company's agent on the Company's behalf, so long as the Company provides the City with evidence of the Company's contractual relationship with its agent for invoicing services.

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

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

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

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

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

8. REPRESENTATIONS:

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

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

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

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

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

10. INSURANCE:

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

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

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

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

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

all such subcontractors and sub-consultants maintain the required coverages. Company agrees to provide proof of insurance for all such subcontractors and sub-consultants upon request by the City.

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

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

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

I. Additional Provisions.

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

11. DEFENSE AND INDEMNIFICATION:

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

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

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

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

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

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

13. CONFLICT OF INTEREST:

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

B. The Company shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Company represents that it has disclosed

any and all current conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Company by placing the Company's own interests, or the interests of any party with whom the Company has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the Company written notice describing the conflict, and thirty (30) days to cure such conflict.

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

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

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

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

18. DEFAULTS AND REMEDIES:

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

- (i) The Company admits in writing that a Bankruptcy Event has occurred with respect to the Company;

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

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

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

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

D. Company’s Remedies. If a City Default described in Section 18.C has occurred and continues for a period of one hundred eighty (180) consecutive days, in addition to other remedies expressly provided herein, the Company may terminate this Agreement upon written notice to the City, sell City’s Allocated Percentage to one or more persons other than the City, recover from the City actual, reasonable and verifiable damages, and the Company may exercise any other remedy it may have at law or equity or under this Agreement. In the event of such termination, the Company shall use reasonable efforts to mitigate its damages.

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

20. EXAMINATION OF RECORDS:

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

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

21. **TERMINATION:**

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

B. Either Party may terminate the Agreement if the other Party or any of such Party's officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with such Party's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

C. **Company Termination.**

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

D. **City Termination.**

- (i) Termination Prior to Commercial Operation Date. If the following event or circumstance occurs before the Commercial Operation Date, the City may terminate the Agreement immediately upon written notice, in which case neither Party will have any liability to the other except for any liabilities that accrued before termination:

(a) Utility or another party with the authority to do so disqualifies the Company from participating in the Solar Gardens in a way that materially impacts Company's ability to perform under this Agreement.

(ii) Termination for Convenience. The City may terminate this Agreement for convenience upon sixty (60) days' prior written notice to the Company.

22. ASSIGNMENT:

A. Assignment by the Company.

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

B. Assignment by the City.

(i) The City shall not assign this Agreement or any interest herein without the prior written consent of the Company; provided, however, that the Company shall not unreasonably withhold, condition or delay its consent.

(ii) The City does not need the Company's consent to change the City Meters for the same amount of subscription as long as all the City Meters are owned by the City and meet the requirements of the community solar garden program. For such change, the City will notify the Company in writing and the Company will inform Utility as necessary of the change as soon as practicable.

(iii) The City's request for the Company's consent to any proposed assignment as contemplated in Section 22.B(i) must be in writing and provided to the Company at least thirty (30) days before the proposed effective date of such

change or assignment, which request must include: (i) the City's name and mailing address; (ii) the current City Meter(s); (iii) the assignee's meters; (iv) the name and contact information for the individual or entity to whom the City is requesting to assign this Agreement (if applicable) and the consideration (if any) proposed to be provided to the City for such assignment; and (v) the proposed effective date of such proposed change or assignment. In the case of any assignment of this Agreement in whole or in part to another individual or entity; (a) such assignee's meters shall be located within Utility's service territory; (b) such assignee shall have a comparable credit rating to that of the assigning the City; (c) such assignee is eligible to receive Bill Credits from the Solar Gardens pursuant to the Tariff and rules governing community solar; (d) such assignee shall make substantially the same representations and warranties as included in Section 8 of this Agreement at the time of the Transfer Date; (e) such assignee shall execute a new Solar*Rewards Community Subscriber Agency Agreement, Consent to Disclose Utility Data (attached as **EXHIBITS G and H**) and any other documentation reasonably necessary to give effect to the assignment of this Agreement substantially in the same form as this Agreement; and (f) the value of any consideration to be provided to the City for assignment of this Agreement may not exceed the aggregate amount of Bill Credits that have accrued to the City but have not yet been applied to the City's monthly invoice(s) from Utility.

C. The City and the Company agree that any assignment of this Agreement is not intended as the offer or sale of a security, and the City and all assignees hereof understand and agree that: (A) the City shall not be responsible for any information provided to any assignee or subassignee in connection with any such assignment and (B) if any such assignment constitutes the offering of a security under applicable security laws, the City shall not be responsible for compliance with any such laws, and any offering or other disclosure document delivered by the City in connection with such assignment shall include a statement to the effect that the City has assumed no responsibility for such document and has neither reviewed nor undertaken to verify any information contained therein.

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

24. INDEPENDENT CONTRACTOR: Company shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon the City. Nothing in this Agreement shall be construed to mean or imply that the Company is a partner, joint venturer, agent or representative of the City. Neither Party shall represent to others that one Party is a partner, joint venturer, agent or representative of, or otherwise associated with, the other Party with respect to the rights and obligations set forth in this Agreement. Company

lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the DRMC.

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

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

City: Executive Director of 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 the Company.

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

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

28. FORCE MAJEURE: No Party will be considered in breach or default of its obligations in the event of delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence (each such event, a "Force Majeure Event"). Force Majeure Events shall include, without limitation, natural disasters, acts of the public enemy, agents of the federal government, fires, floods, epidemics, pandemics, quarantine restrictions and unusually severe weather. In the event of the occurrence of any such delay, the time or times for performance of any of the obligations of the Party whose performance is affected by the Force Majeure (the "Affected Party") will be extended for the period of the delay, provided that such delay could not have been avoided by the exercise of due diligence, the Affected Party has

exhausted all reasonable means of performing its obligations including implementing alternative means of performance, and the Affected Party has taken reasonable steps to mitigate or prevent further delay. The Affected Party shall promptly notify the other Party of the cause or causes of the Force Majeure Event and shall continue to exercise reasonable commercial efforts to overcome such Force Majeure.

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

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

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

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

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

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

35. LEGAL EFFECT OF CONTRACT:

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

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

36. COOPERATION: Upon the receipt of a written request from the other Party and without further consideration, each Party shall provide materials, information, and assurances and take

such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section. Without limiting the foregoing, the Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required.

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

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

List of Exhibits:

- EXHIBIT A:** Producer Agreements
- EXHIBIT B:** City Meters
- EXHIBIT C:** Description of the Solar Gardens
- EXHIBIT D:** Estimated Annual Energy Output
- EXHIBIT E:** Purchase Price
- EXHIBIT F:** Insurance ACORD Certificate
- EXHIBIT G:** SRC Subscriber Agency Agreements
- EXHIBIT H:** Utility Data Consent Form

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EXHIBIT A: Producer Agreements

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

EXHIBIT B: City Meters

The City Meters and corresponding City’s Allocated Percentages for the Solar Gardens are detailed below:

Account Address	Account Number	Premise Number	Utility Tariff	Annual Usage	Subscription Capacity – (Watts DC)	Est. kWhac delivered to Subscriber in year one	% of total Subscription allocation
			Totals				

Notes:

- Subscribed energy cannot exceed 120% of the annual usage of any meter
- Each utility meter can be assigned to more than one Solar Garden
- Total subscription capacity and delivered kWhac estimates may change based on final System design and project location. If such estimates change, the Company shall notify the City and provide updated estimates prior to a System achieving Commercial Operation.
- This estimate is in no way a guarantee of delivered kWhac to the Subscriber.

EXHIBIT C: Description of Solar Gardens

The City agrees to purchase from the Company the right to receive Bill Credits for the City's Allocation Percentages of the Energy Output for the Solar Gardens described below. The following represent initial estimates. The Parties understand and agree that these descriptions may need to be updated prior to each of the Solar Gardens achieving Commercial Operation due to changes in the final System design or project location. If such changes occur, the Company shall notify the City and provide an updated Solar Garden description prior to a System achieving Commercial Operation.

EXHIBIT D: Estimated Annual Energy Output

The estimated annual Energy Output of the Solar Gardens as shown in Exhibit C from which the City is purchasing Bill Credits is detailed below.

Year	Estimated Energy Output – kWhac	City Allocation %	Estimated kWhac delivered to the City
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
Totals			

Notes:

- This estimate may be updated by the Company, if needed, should the final designs, project location, and/or production capacity of the Solar Gardens changes. If such changes occur, the Company shall notify the City and provide updated estimates prior to a System achieving Commercial Operation.
- This estimate is in no way a guarantee of delivered kWhac to the City.
- Energy Output is anticipated to decrease annually by 0.6%

EXHIBIT E: Purchase Price

On a monthly basis during the Term, the City shall pay the Company an amount equal to City’s Allocated Percentage of the Energy Output during the applicable production month. The per kWhac Purchase Price shall be a fixed 10% discount off the Utility Bill Credit in effect during the year in which the production month occurs.

The Bill Credit rate can, and will likely, change from year to year and the Purchase Price will be adjusted annually to reflect the 10% discount as necessary. Below is a pricing schedule that shows the potential Purchase Prices for the Term of the agreement. This schedule is for illustrative purposes only and is in no way a guarantee of the actual Purchase Price.

Year	Estimated kWhac delivered to Subscriber	Bill Credit Rate (\$/kWhac)	Bill Credits applied to Subscriber Accounts	Estimated Purchase Price - \$	Estimated Subscriber Savings
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
Totals					

Notes:

- This estimate may be updated by the Company, if needed, should the final designs, project locations, and/or production capacity of the Solar Gardens change. If such changes occur, the Company shall notify the City and provide updated estimates prior to a System achieving Commercial Operation.
- This estimate is in no way a guarantee of delivered bill credits or savings to the Subscriber.
- Energy Output is anticipated to decrease annually by 0.6%
- Bill Credit Rate is projected to increase by 2% annually

EXHIBIT F: Insurance ACORD Certificate

EXHIBIT G: SRC Subscriber Agency Agreement

The Parties understand and agree that the SRC Subscriber Agency Agreements may need to be updated prior to each of the Solar Gardens achieving Commercial Operation due to changes in the final System design or project location. If such changes occur, the Company shall notify the City and provide an updated SRC Subscriber Agency Agreements that the Subscriber will sign and return to the Company prior to a System achieving Commercial Operation.

EXHIBIT H: Utility Data Consent Form

EXHIBIT B**GENERATING FACILITY ASSET MANAGEMENT SPECIAL CONDITIONS**

Attachment 6 – Time and Materials Rates

Time and Materials Bill Rates for Operation and Maintenance services are not included in the base Asset Management Fee. 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 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.

Hourly Labor Rates

	Standard Rate (\$/hr)
Asset Manager	\$145
Solar Technician	\$106
Lead Solar Technician/Licensed Electrician	\$142
Medium Voltage Qualified Electrician	\$180
Non-Solar Laborer	\$88

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 retail cost plus a 10% markup.

EXHIBIT C

CERTIFICATE OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/15/2021

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).

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

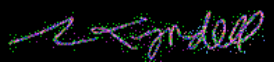
COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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	X COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR X WA Stop Gap GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	X	VTC2KCO5643B901IND21	1/31/2021	1/31/2022	EACH OCCURRENCE	\$ 2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 2,000,000
							GENERAL AGGREGATE	\$ 4,000,000
							PRODUCTS - COMP/OP AGG	\$ 4,000,000
								\$
B	X AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			VTC2J-CAP-5643B913-TIL-21	1/31/2021	1/31/2022	COMBINED SINGLE LIMIT (Ea accident)	\$ 2,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB						EACH OCCURRENCE	\$
	EXCESS LIAB						AGGREGATE	\$
	DED							\$
	RETENTION \$							\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N N N/A X	N/A	X	6899Y8019	10/1/2021	10/1/2022	X PER STATUTE <input type="checkbox"/> OTH-ER	1,000,000
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
D	PROFESSIONAL LIAB			EOC673879408	1/31/2021	1/31/2022	OCC/AGG:	1,000,000

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

City and County of Denver 201 W Colfax Ave Denver, CO 80202	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**BLANKET ADDITIONAL INSURED
(CONTRACTORS)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

COMMERCIAL GENERAL LIABILITY

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

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c) The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d) The additional insured must tender the defense and indemnity of any claim or "suit" to

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

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

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**OTHER INSURANCE – DESIGNATED ADDITIONAL
INSUREDS – PRIMARY WITH RESPECT TO CERTAIN
OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE OF DESIGNATED ADDITIONAL INSUREDS

Any person or organization that qualifies as an additional insured under such other endorsement to this Coverage Part, if you agree in a written contract to include such person or organization as an additional insured on this Coverage Part and such written contract:

- a. Specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis; and
- b. Was signed and executed by you before, and is in effect when, the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed

PROVISIONS

The following is added to Paragraph 4.a., **Primary Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The insurance afforded under this Coverage Part to any additional insured shown in the Schedule Of

Designated Additional Insureds is primary to any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR CONTRACTORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> A. Who Is An Insured – Unnamed Subsidiaries B. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations | <ul style="list-style-type: none"> C. Incidental Medical Malpractice D. Blanket Waiver Of Subrogation E. Contractual Liability – Railroads F. Damage To Premises Rented To You |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

PROVISIONS

A. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

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

Any of your subsidiaries, other than a partnership, joint venture or limited liability company, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You are the sole owner of, or maintain an ownership interest of more than 50% in, such subsidiary on the first day of the policy period; and
- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal and advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

For purposes of Paragraph 1. of Section II – Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

- a. An organization other than a partnership, joint venture or limited liability company; or

- b. A trust;

as indicated in its name or the documents that govern its structure.

B. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS

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

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

- a. Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

COMMERCIAL GENERAL LIABILITY

C. INCIDENTAL MEDICAL MALPRACTICE

1. The following replaces Paragraph **b.** of the definition of "occurrence" in the **DEFINITIONS** Section:

b. An act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

2. The following replaces the last paragraph of Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a)**, **(b)**, **(c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide:

(a) "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician or paramedic; or

(b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following replaces the last sentence of Paragraph **5.** of **SECTION III – LIMITS OF INSURANCE**:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph **2.**, **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Sale Of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of

pharmaceuticals committed by, or with the knowledge or consent of, the insured.

5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or

b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

6. The following is added to Paragraph **4.b.**, **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph **2.a.(1)** of Section II – Who Is An Insured.

D. BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph **8.**, **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

a. "Bodily injury" or "property damage" that occurs; or

b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.

E. CONTRACTUAL LIABILITY – RAILROADS

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

c. Any easement or license agreement;

COMMERCIAL GENERAL LIABILITY

2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

F. DAMAGE TO PREMISES RENTED TO YOU

The following replaces the definition of "premises damage" in the **DEFINITIONS** Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**TOTAL AGGREGATE LIMIT OTHER THAN PROJECTS
AND DESIGNATED PROJECT AND LOCATION
AGGREGATE LIMITS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE – LIMITS OF INSURANCE AND DESIGNATED PROJECTS AND LOCATIONS

LIMITS OF INSURANCE

Total Aggregate Limit (Other Than Projects and Products-Completed Operations)	\$ 25,000,000
Designated Location Aggregate Limit (Other Than Products-Completed Operations)	\$ 4,000,000
Designated Project Aggregate Limit (Other Than Products-Completed Operations)	\$ 4,000,000
General Aggregate Limit (Other Than Products-Completed Operations)	\$ 4,000,000

Designated Projects:

Each "project" away from premises owned by or rented to you
Designated Locations: Each premises owned by or rented to you

Designated Locations:

Each premises owned by or rented to you

PROVISIONS

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> The General Aggregate Limit (Other Than Products-Completed Operations) shown in the Declarations is replaced by the Limits of Insurance shown in the Schedule – Limits Of Insurance And Designated Projects And Locations. The following replaces Paragraph 1. of SECTION III – LIMITS OF INSURANCE: | <ol style="list-style-type: none"> The Limits of Insurance shown in the Declarations or the Schedule – Limits Of Insurance And Designated Projects And Locations, whichever apply, and the rules below fix the most we will pay regardless of the number of: <ol style="list-style-type: none"> Insureds; Claims made or "suits" brought; |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

COMMERCIAL GENERAL LIABILITY

- c. Persons or organizations making claims or bringing "suits"; or
 - d. "Projects" or "locations".
3. The following replaces Paragraph 2. of **SECTION III – LIMITS OF INSURANCE:**
2. a. The Total Aggregate Limit shown in the Schedule – Limits Of Insurance And Designated Projects And Locations is the most we will pay for the sum of all amounts under the Designated Location Aggregate Limit and all amounts under the General Aggregate Limit. This includes:
- (1) Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard";
 - (2) Damages under Coverage B; and
 - (3) Medical expenses under Coverage C.
- b. The Designated Project Aggregate Limit shown in the Schedule – Limits Of Insurance And Designated Projects And Locations applies and is further subject to all of the following provisions:
- (1) The Designated Project Aggregate Limit is the most we will pay for the sum of:
 - (a) Damages under Coverage A because of "bodily injury" and "property damage" caused by "occurrences"; and
 - (b) Medical expenses under Coverage C for "bodily injury" caused by accidents;
 that can be attributed only to operations at a single "project".
 - (2) The Designated Project Aggregate Limit applies separately to each "project".
 - (3) The Designated Project Aggregate Limit does not apply to damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard". Instead, the Products-Completed Operations Aggregate Limit described in Paragraph 3. below applies to such damages.
 - (4) The Designated Project Aggregate Limit does not apply to damages
- under Coverage B. Instead, the General Aggregate Limit described in Paragraph 2.d. below applies to such damages.
- (5) Any payments made for damages or medical expenses to which the Designated Project Aggregate Limit applies will reduce the Designated Project Aggregate Limit for the applicable "project". Such payments will not reduce the Total Aggregate Limit, the General Aggregate Limit described in Paragraph 2.d. below, the Designated Project Aggregate Limit for any other "project" or the Designated Location Aggregate Limit.
- c. Subject to the Total Aggregate Limit described in Paragraph 2.a. above, the Designated Location Aggregate Limit shown in the Schedule – Limits Of Insurance And Designated Projects And Locations applies and is further subject to all of the following provisions:
- (1) The Designated Location Aggregate Limit is the most we will pay for the sum of:
 - (a) Damages under Coverage A because of "bodily injury" and "property damage" caused by "occurrences"; and
 - (b) Medical expenses under Coverage C for "bodily injury" caused by accidents;
 that can be attributed only to operations at a single "location".
 - (2) The Designated Location Aggregate Limit applies separately to each "location".
 - (3) The Designated Location Aggregate Limit does not apply to damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard". Instead, the Products-Completed Operations Aggregate Limit described in Paragraph 3. below applies to such damages.
 - (4) The Designated Location Aggregate Limit does not apply to damages ssunder Coverage B. Instead, the General Aggregate Limit described in

Paragraph **2.d.** below applies to such damages.

- (5) Any payments made for damages or medical expenses to which the Designated Location Aggregate Limit applies will reduce:

- (a) The Total Aggregate Limit; and
 (b) The Designated Location Aggregate Limit for the applicable "location".

Such payments will not reduce the General Aggregate Limit described in Paragraph **2.d.** below, the Designated Project Aggregate Limit or the Designated Location Aggregate Limit for any other "location".

- d. Subject to the Total Aggregate Limit described in Paragraph **2.a.** above, the General Aggregate Limit shown in the Schedule – Limits Of Insurance And Designated Projects And Locations applies and is further subject to all of the following provisions:

- (1) The General Aggregate Limit is the most we will pay for the sum of:

- (a) Damages under Coverage **A** because of "bodily injury" and "property damage" caused by "occurrences", and medical expenses under Coverage **C** for "bodily injury" caused by accidents, that cannot be attributed only to operations at a single "project" or a single "location"; and
 (b) Damages under Coverage **B**.

- (2) The General Aggregate Limit does not apply to damages for "bodily injury" or "property damage" included in the "products-completed operations hazard". Instead, the Products-Completed Operations Aggregate Limit described in Paragraph **3.** below applies to such damages.

- (3) Any payments made for damages or medical expenses to which the

General Aggregate Limit applies will reduce:

- (a) The Total Aggregate Limit; and
 (b) The General Aggregate Limit.

Such payments will not reduce the Designated Project Aggregate Limit for any "project" or the Designated Location Aggregate Limit for any "location".

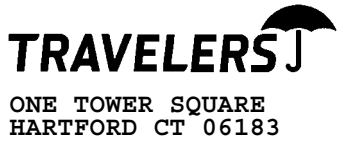
4. The following replaces Paragraph **3.** of **SECTION III – LIMITS OF INSURANCE:**

3. The Products-Completed Operations Aggregate Limit shown in the Declarations is the most we will pay under Coverage **A** for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard". Any payments made for such damages will not reduce the Total Aggregate Limit, the General Aggregate Limit, the Designated Project Aggregate Limit for any "project" or the Designated Location Aggregate Limit for any "location".

5. The following is added to the **DEFINITIONS** Section:

"Location" means any designated location shown in the Schedule – Limits Of Insurance And Designated Projects and Locations that is owned by or rented to you. For the purposes of determining the applicable aggregate limit of insurance, each "location" that includes a premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or waterway, or by a right-of-way of a railroad, will be considered a single "location".

"Project" means any designated project shown in the Schedule – Limits Of Insurance And Designated Projects And Locations that is away from premises owned by or rented to you and at which you are performing operations pursuant to a contract or agreement. For the purposes of determining the applicable aggregate limit of insurance, each "project" that includes a premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or waterway, or by a right-of-way of a railroad, will be considered a single "project".



**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

ENDORSEMENT WC 00 03 13 (00) - 001

POLICY NUMBER: UB-9K158609-21-25-G

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

SCHEDULE

DESIGNATED PERSON:

DESIGNATED ORGANIZATION:

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED
BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS
WAIVER.

Any person or organization for which the employer has agreed by written contract, executed prior to loss, may execute a waiver of subrogation. However, for purposes of work performed by the employer in Missouri, this waiver of subrogation does not apply to any construction group of classifications as designated by the waiver of right to recover from others (subrogation) rule in our manual.

EXHIBIT D**PROJECT TRANCHE ONE - RENEWABLE DENVER COMMUNITY SOLAR I
("RDCSI")****Attachment 1 – List and Depiction of Properties****I. OVERVIEW**

Included in this Attachment are the Properties under control of the City for which the Operator has been awarded community solar capacity by the Utility Provider for the development and construction of Generating Facilities. All final locations are subject to City approval, and for DEN Properties, DEN CEO's approval. The Parties recognize and agree that the list and depictions of Properties may change. If so, this Agreement shall be amended to reflect any such changes.

This Agreement may be amended to include additional exhibits with other Project Tranches of Projects as the City secures additional Properties for which the Operator is awarded additional community solar capacity by the Utility Provider.

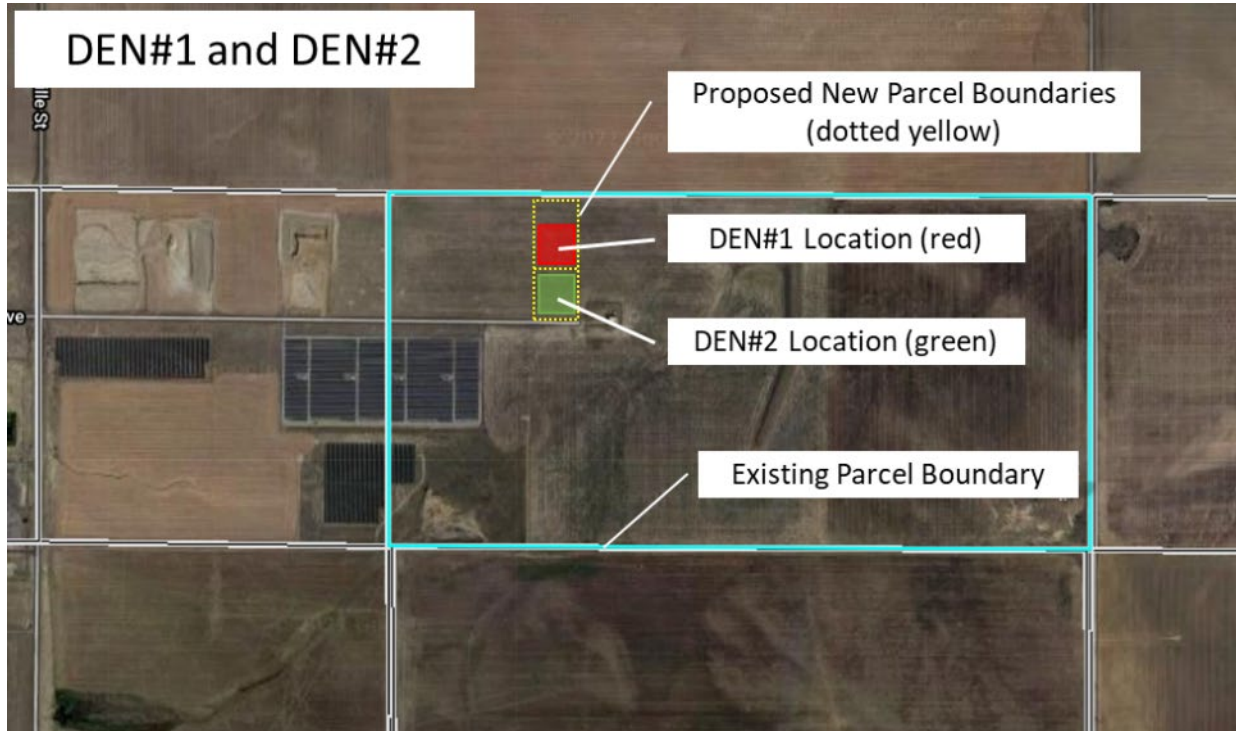
II. LIST OF PROPERTIES

Site Name	Site Host	SRC Number	kW-dc	kW-ac	Address	System Type
DEN #1	City of Denver – Denver International Airport	SRC083127	625.6	500.0	North Airfield - Address yet to be assigned	Single Axis Tracker
DEN #2	City of Denver – Denver International Airport	SRC083136	625.6	500.0	North Airfield - Address yet to be assigned	Single Axis Tracker
Central Park Rec Center	City of Denver – Parks and Recreation	SRC083131	655.2	480.0	9651 M.L.K. Jr Blvd Denver, CO 80238	Parking Canopy
Harvard Gulch Rec Center	City of Denver – Parks and Recreation	SRC083134	293.9	236.0	550 E Iliff Ave Denver, CO 80210	Parking Canopy
Montbello Rec Center	City of Denver – Parks and Recreation	SRC083126	556.5	456.0	15555 E 53rd Ave Denver, CO 80239	Parking Canopy
Lowry Tennis Courts	City of Denver – Parks and Recreation	SRC083129	429.5	312.0	8100 E Lowry Blvd Denver, CO 80230	Parking Canopy
M&O Building	National Western Center	SRC083128	282.3	220.0	5125 Race Ct Denver, CO 80216	Flat Roof
SYEC Building	National Western Center	SRC083135	268.5	210.0	5004 Packing House Rd Denver, CO 80216	Pitched Roof
Roslyn DOTI Complex	City of Denver - Department of Transportation	TBD	523.3	446.0	5440 Roslyn St Denver, CO 80216	Parking Canopy
DPS NE Early College	Denver Public Schools	TBD	308.5	243.0	11200 E 45 th Ave Denver, CO 80239	Parking Canopy

III. DEPICTION OF PROPERTIES

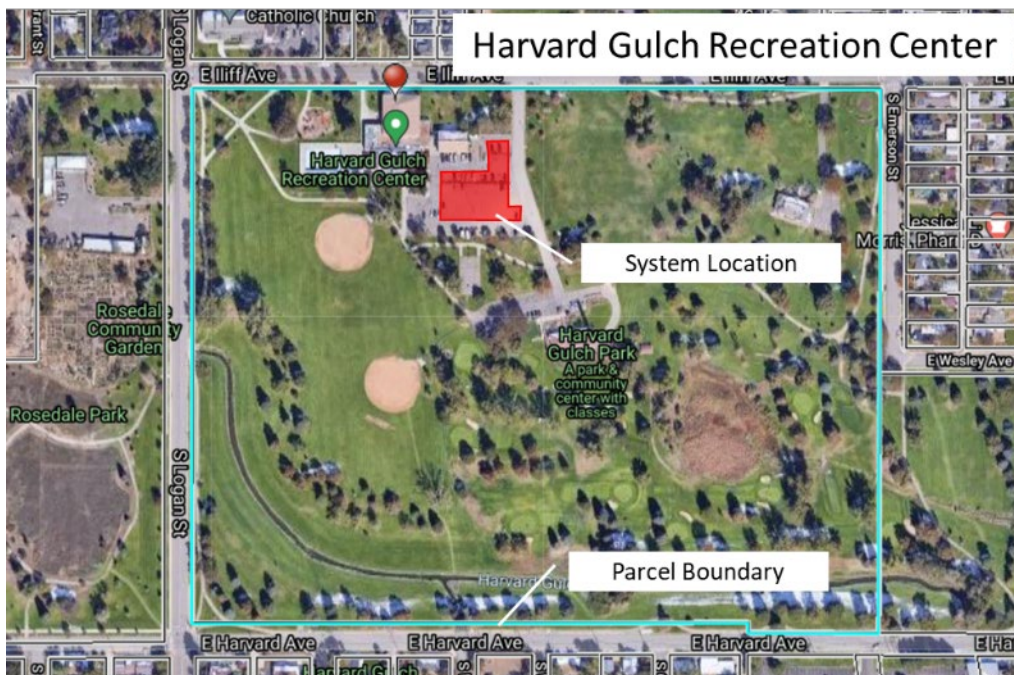
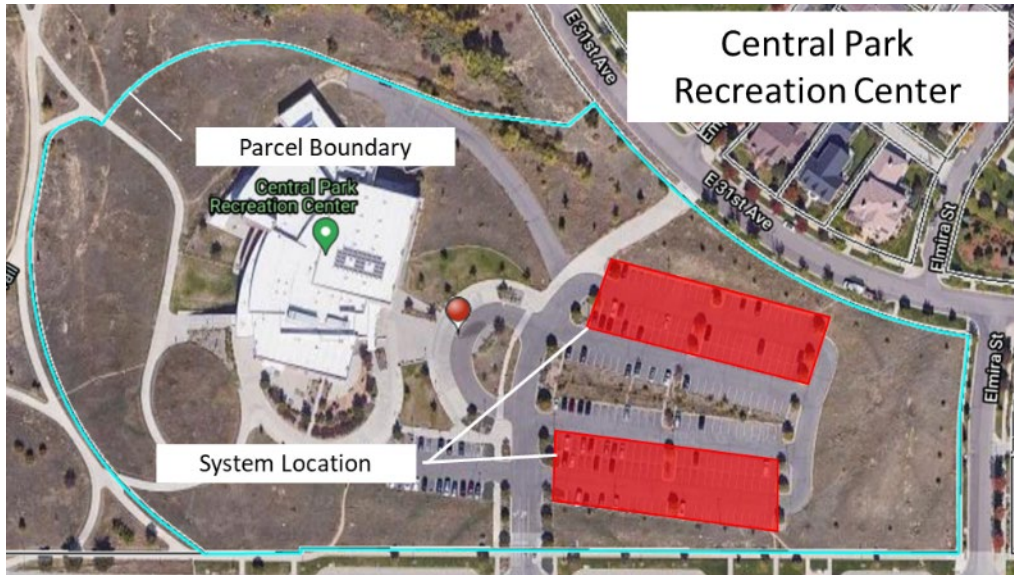
Site Name	Site Address	PV System Type	Size (kW-AC)
DEN #1	North Airfield	Ground Tracker	500
DEN #2	North Airfield	Ground Tracker	500

Approximately 8 acres in the North Airfield
(subject to final system design and permitting and City Approval)



Site Name	Site Address	PV System Type	Size (kW-AC)
Central Park Rec Center	9651 M.L.K. Jr Blvd, Denver, CO 80238	Parking Canopy	480
Harvard Gulch Rec Center	550 E Iliff Ave, Denver, CO 80210	Parking Canopy	236

(subject to final system design and permitting and City Approval)



Site Name	Site Address	PV System Type	Size (kW-AC)
Montbello Rec Center	15555 E 53rd Ave, Denver, CO 80239	Parking Canopy	456
Lowry Tennis Courts	8100 E Lowry Blvd. Denver, CO 80230	Parking Canopy	312



Site Name	Site Address	PV System Type	Size (kW-AC)
NWC M&O	4655 Humboldt St, Denver, CO 80216	Flat Roof	220
NWC SYEC	4655 Humboldt St, Denver, CO 80216	Pitched Roof	210

(subject to final system design and permitting and City Approval)



Site Name	Site Address	PV System Type	Size (kW-AC)
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DOTI Roslyn Complex	5440 Roslyn St, Denver, CO 80216	Parking Canopy	446
DPS NE Early College	11200 E 45 th Ave, Denver, CO 80239	Parking Canopy	258

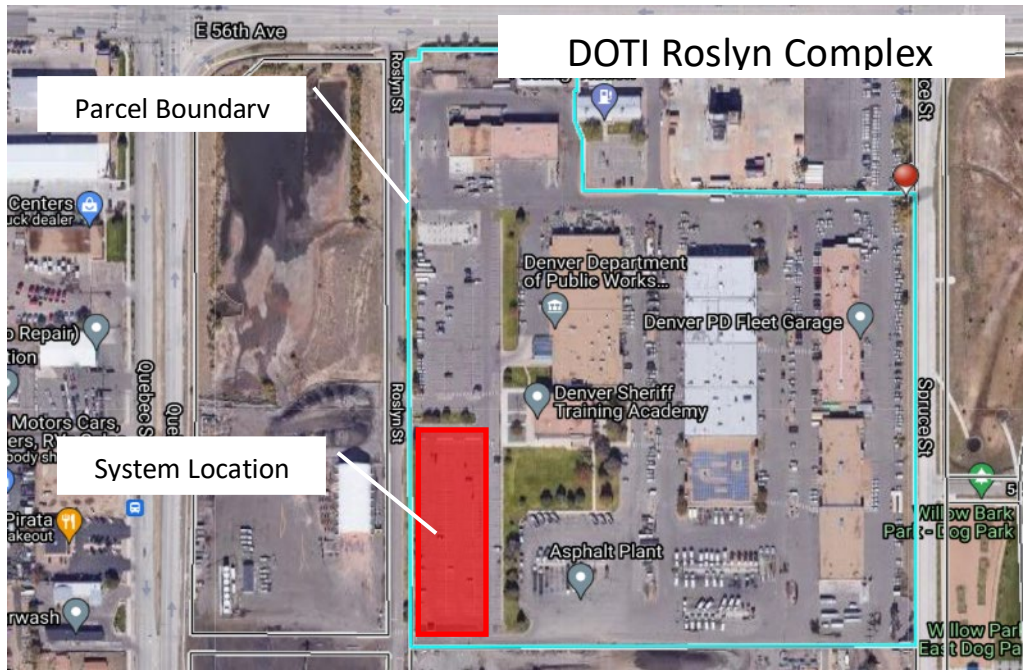


EXHIBIT D**PROJECT TRANCHE ONE - RDCS I****Attachment 2 – Project Specifications**

The Operator will design, engineer and install solar PV and/or EV charger system(s) at each Property. Below are the DC and AC system capacity, major system component manufacture and quantity information, and an Indicative Site Plan (collectively the “**Specifications**”) for each Property. The Parties agree that the Specifications may change with final designs, product selection, and system specifications to be provided to the City in the Design Submittal Package, which must be approved by the City. The Parties recognize and agree that these Specifications would change if the Properties used for the Generating Facility change.

This Exhibit may be amended to include, or a new exhibit may be added to cover, additional Project Tranches of Projects as the City secures additional Properties for which the Operator is awarded additional community solar capacity by the Utility Provider.

Project Tranche #1: RDCS I**Site Name DEN #1**

SRC Number: SRC083127

Address: Not yet assigned

Solar System Application: Ground Mount

DC System Capacity– 625.6 kWdc

AC System Capacity – 500.0 kWac

Major System Components

Quantity	Product
1,375	Jinko Solar JKM455M-7RL3-TV 455 Wdc Bifacial Solar Modules
5	Delta Electronics M125HV 100 kWac Solar Inverters
1	Array Technologies DuraTrack HZ v3 Single Axis Tracking Mounting System
1	AlsoEnergy Data Acquisition System (DAS) Package

Indicative Site Plan

- GENERAL NOTES**
1. THIS INDICATIVE SITE PLAN IS NOT FOR CONSTRUCTION.
 2. THIS INDICATIVE SITE PLAN IS NOT FOR CONSTRUCTION.
 3. THIS INDICATIVE SITE PLAN IS NOT FOR CONSTRUCTION.

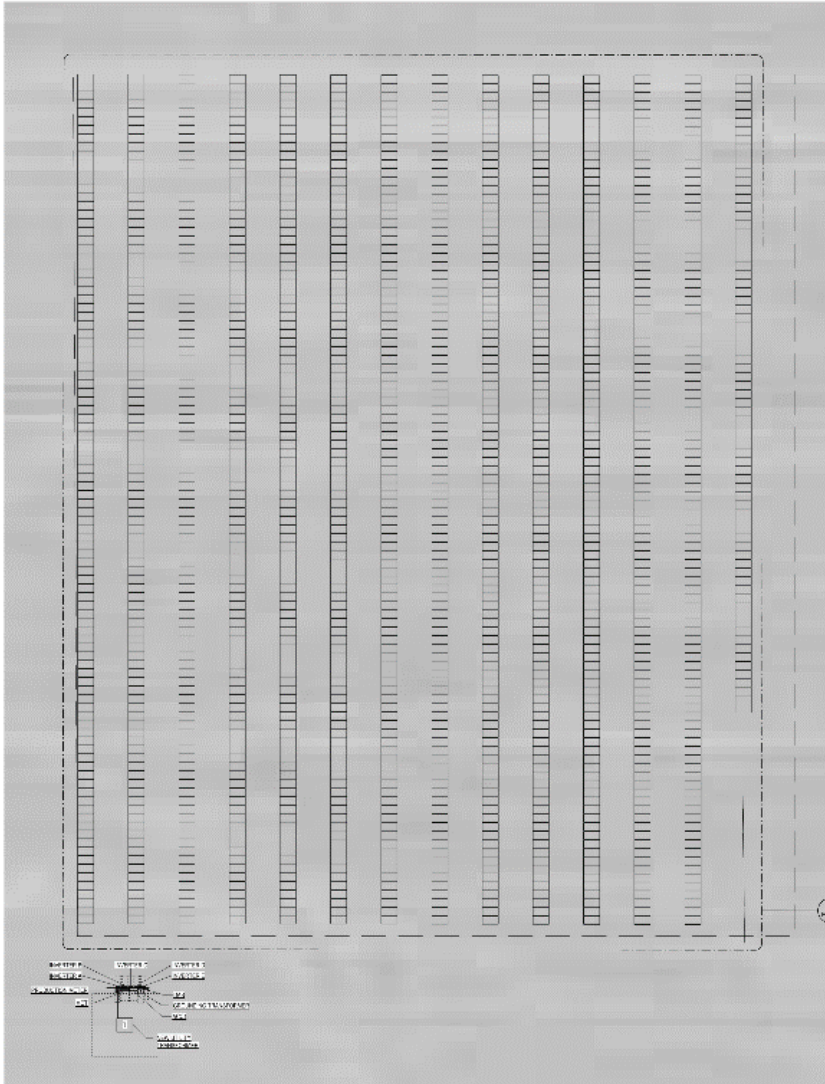


SEATTLE, WA 98101
 206.464.2490
 1111 PARK AVENUE, SUITE 2000
 SEATTLE, WA 98101

DENVER AIRPORT TRACKERS NORTH PV

8500 PENA BLVD,
 DENVER, CO 80249
 (303.804.5888, +104.654.706)

CONTRACT NO.



1 SITE PLAN
 ES-100 SCALE: 1/4" = 1'-0"

PROJECT NO.

NOT FOR CONSTRUCTION

NO.	DATE	DESCRIPTION
1	05/20/2014	ISSUED FOR PERMITTING
2	06/10/2014	FOR REVIEW AND COMMENT
3	06/20/2014	FOR REVIEW AND COMMENT
4	07/01/2014	FOR REVIEW AND COMMENT
5	07/15/2014	FOR REVIEW AND COMMENT
6	07/25/2014	FOR REVIEW AND COMMENT
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97	02/05/2017	FOR REVIEW AND COMMENT
98	02/15/2017	FOR REVIEW AND COMMENT
99	02/25/2017	FOR REVIEW AND COMMENT
100	03/05/2017	FOR REVIEW AND COMMENT

DATE: 05/20/2014
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT NO.: 05-2014-0001

SITE PLAN

PROJECT NO.
ES-100

Site Name: DEN #2

SRC Number: SRC083136

Address: Not yet assigned

Solar System Application: Ground Mount

DC System Capacity– 625.6 kWdc

AC System Capacity – 500.0 kWac

Major System Components

Quantity	Product
1,375	Jinko Solar JKM455M-7RL3-TV 455 Wdc Bifacial Solar Modules
5	Delta Electronics M125HV 100 kWac Solar Inverters
1	Array Technologies DuraTrack HZ v3 Single Axis Tracking Mounting System
1	AlsoEnergy Data Acquisition System (DAS) Package

Indicative Site Plan

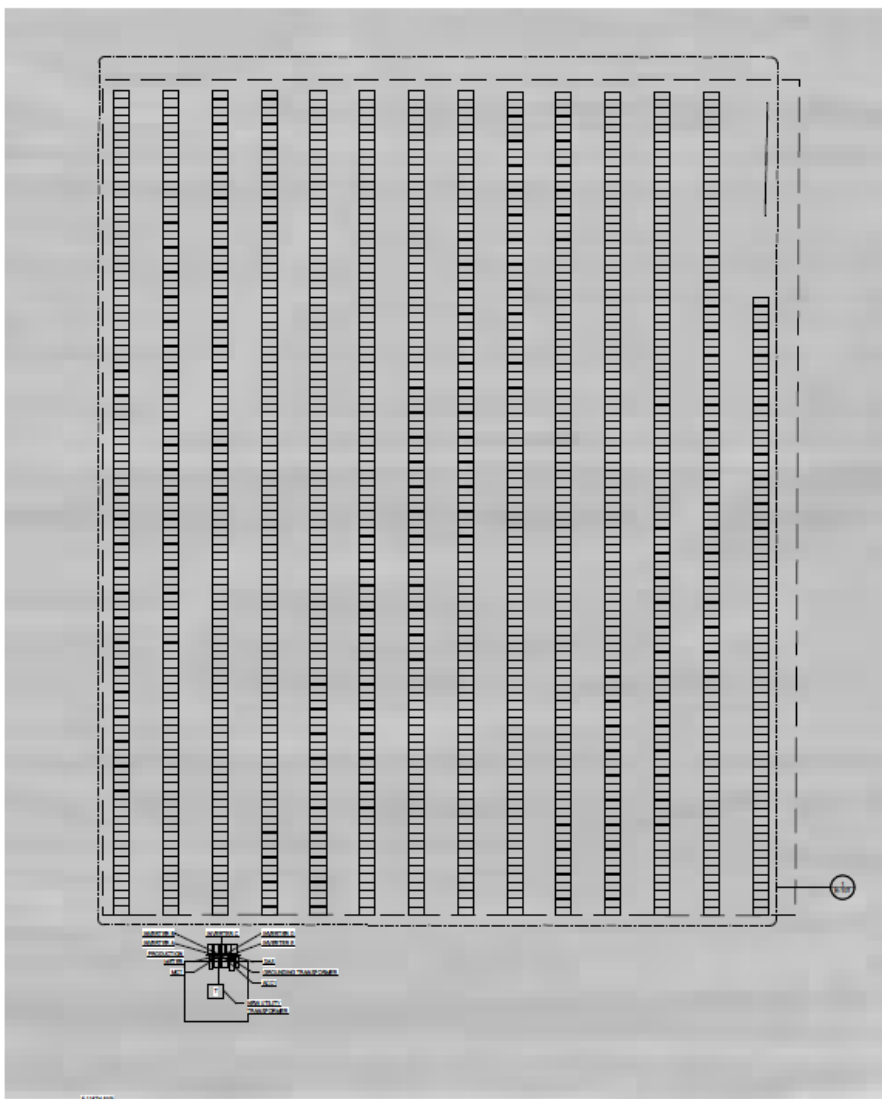


SEATTLE: 505 3RD AVENUE, S
PO BOX 24807
SEATTLE, WA 98124
1-800-855-8220
WWW.MCKINSTRY.COM

DENVER AIRPORT TRACKERS SOUTH PV

8500 PENA BLVD,
DENVER, CO 80249
(39.904588, -104.654706)

GENERAL NOTES
 A. REFER TO THE PLANS IN COMBINATION SHEET FOR ADDITIONAL LOCATION DETAILS.
 B. UNIDENTIFIED REFRIGERATORS SHALL BE REWIRED TO SOLAR ENERGY EQUIPMENT.
 C. DISTANCES BETWEEN EQUIPMENT SHALL BE AS SHOWN TO THE CENTER OF THE EQUIPMENT UNLESS OTHERWISE NOTED.



NOT FOR CONSTRUCTION

NO.	DATE	DESCRIPTION

DESIGNED: JSD
 DRAWN: JSD
 CHECKED: JSD
 JOB NO. 202201006
 ISSUE ON: 06/27/2022
 SHEET TITLE: SITE PLAN

1 SITE PLAN
 ES-100 SCALE: 1" = 20'

SHEET NUMBER: **ES-100**

Site Name Central Park Recreation Center

SRC Number: SRC083131

Address: 9651 M.L.K. Jr. Blvd, Denver CO 80238

Solar System Application: Parking Canopy

DC System Capacity– 655.2 kWdc

AC System Capacity – 480 kWac

Major System Components

Quantity	Product
1,440	Jinko Solar JKM455M-7RL3-TV 455 Wdc Bifacial Solar Modules
8	CPS SCA60KTL-DO/US-480 60 kWac Inverters
4	Tee Cantilever Parking Canopy Systems
1	AlsoEnergy Data Acquisition System (DAS) Package
2	Chargepoint CT4021-GW1 Dual Port Level 2 EV Chargers

Indicative Site Plan

Site Name Harvard Gulch Recreation Center

SRC Number: SRC083134

Address: 550 E Iliff Ave, Denver CO 80210

Solar System Application: Parking Canopy

DC System Capacity– 293.9 Wdc

AC System Capacity – 236.0 kWac

Major System Components

Quantity	Product
646	Jinko Solar JKM455M-7RL3-TV 455 Wdc Bifacial Solar Modules
5	4 x CPS SCA50KTL-DO/US-480 50 kWac Inverters 1 x CPS SCA36KTL-DO/US-480 36 kWac Inverters
3	Tee Cantilever Parking Canopy Systems
1	AlsoEnergy Data Acquisition System (DAS) Package
2	Chargepoint CT4021-GW1 Dual Port Level 2 EV Chargers

Indicative Site Plan



3030 W. 10TH AVENUE
DENVER, CO 80202
303.555.6677
www.mckinstry.com

PROJECT
**HARVARD
GULCH REC.
CENTER PV**

550 E. ILLIFF AVE.,
DENVER, CO 80210
CONTRACT NO.

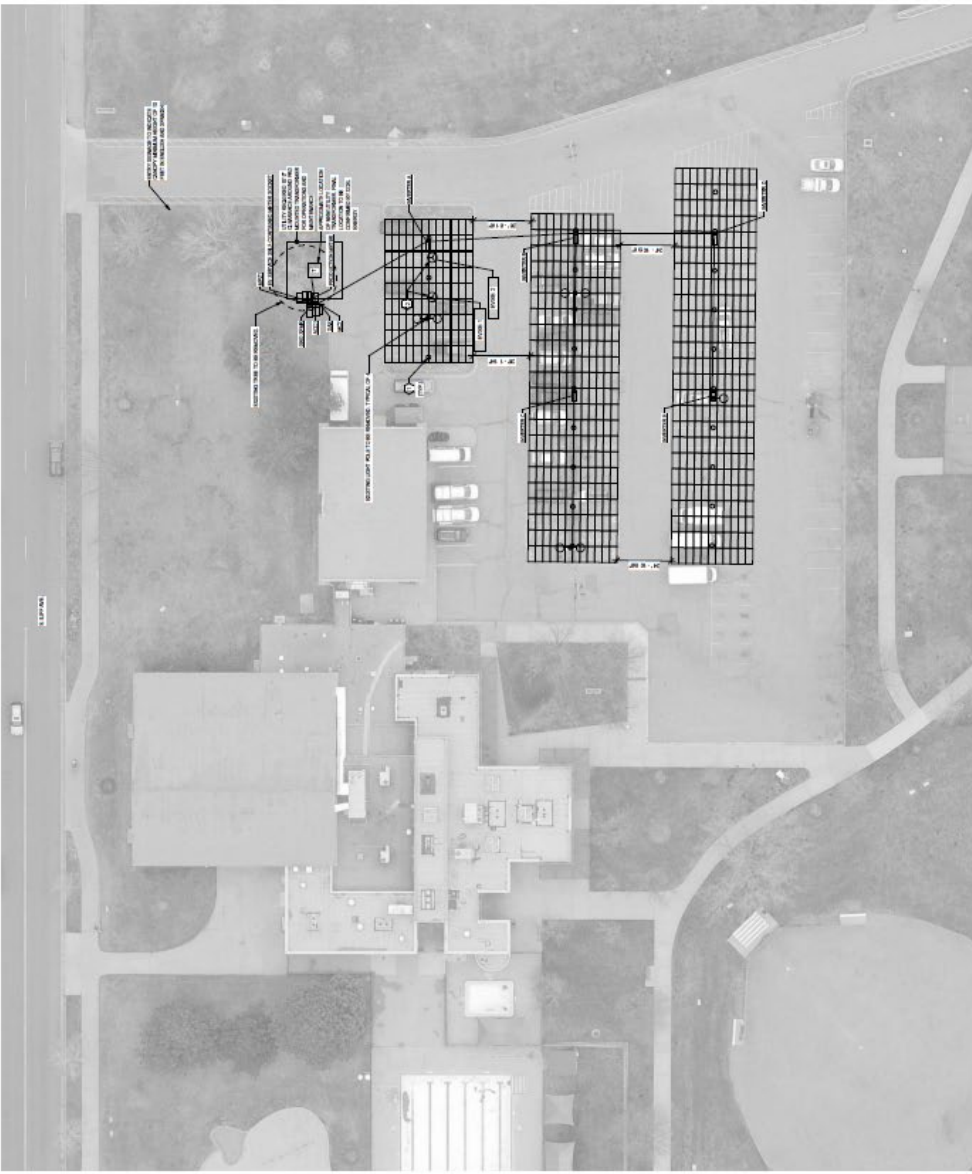
REVISIONS

NOT FOR CONSTRUCTION

NO.	DATE	DESCRIPTION

DRAWING NUMBER
ES-100

- GENERAL NOTES**
- VERIFY ALL FIELD CONDITIONS AND CONFORMANCE TO ALL APPLICABLE CODES, SPECIFICATIONS, AND STANDARDS.
 - VERIFY ALL FIELD CONDITIONS AND CONFORMANCE TO ALL APPLICABLE CODES, SPECIFICATIONS, AND STANDARDS.
 - VERIFY ALL FIELD CONDITIONS AND CONFORMANCE TO ALL APPLICABLE CODES, SPECIFICATIONS, AND STANDARDS.
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 - VERIFY ALL FIELD CONDITIONS AND CONFORMANCE TO ALL APPLICABLE CODES, SPECIFICATIONS, AND STANDARDS.



1 SITE PLAN
SCALE: 1"=50'
ES-100

Site Name Montbello Recreation Center

SRC Number: SRC083126

Address: 15555 E 53rd Ave, Denver CO 80239

Solar System Application: Parking Canopy

DC System Capacity– 556.5 kWdc

AC System Capacity – 456.0 kWac

Major System Components

Quantity	Product
1,223	Jinko Solar JKM455M-7RL3-TV 455 Wdc Bifacial Solar Modules
9	2 x CPS SCA60KTL-DO/US-480 60 kWac Inverters 6 x CPS SCA50KTL-DO/US-480 50 kWac Inverters 1 x CPS SCA36KTL-DO/US-480 36 kWac Inverters
4	Tee Cantilever Parking Canopy Systems
1	AlsoEnergy Data Acquisition System (DAS) Package
2	Chargepoint CT4021-GW1 Dual Port Level 2 EV Chargers

Indicative Site Plan



15555 E 53rd Ave, Denver, CO 80239

MONTBELLO RECREATION CENTER LOT PV

15555 E 53rd Ave, Denver, CO 80239

NOT FOR CONSTRUCTION

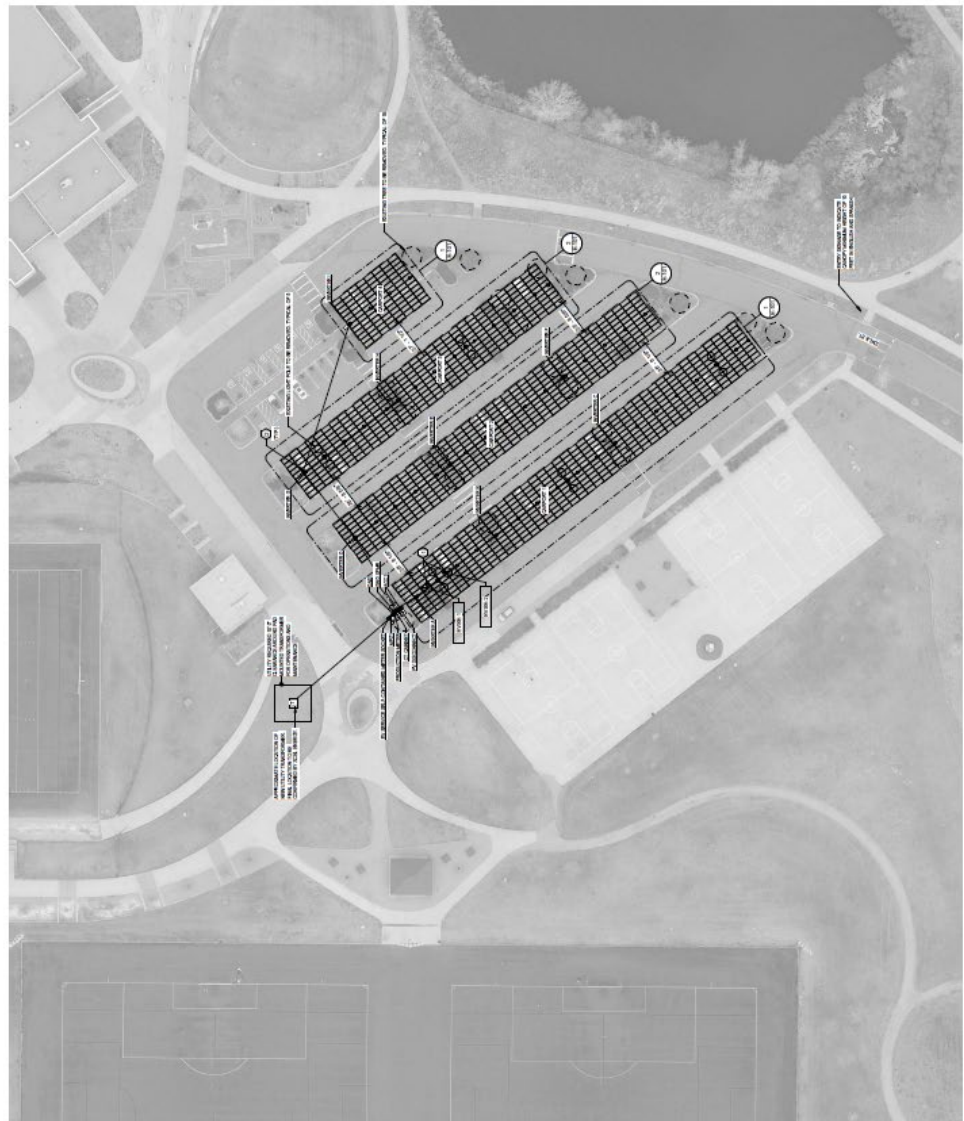
NOT FOR CONSTRUCTION

Table with 2 columns: NO. and DESCRIPTION. The table is mostly empty.

SITE PLAN

ES-100

GENERAL NOTES and KEYNOTES section containing project specifications and symbols.



T SITE PLAN ES-100

Site Name Lowry Tennis Center

SRC Number: SRC083129

Address: 8100 E Lowry Blvd, Denver CO 80230

Solar System Application: Parking Canopy

DC System Capacity– 429.5 kWdc

AC System Capacity – 312.0 kWac

Major System Components

Quantity	Product
944	Jinko Solar JKM455M-7RL3-TV 455 Wdc Bifacial Solar Modules
6	4 x CPS SCA60KTL-DO/US-480 60 kWac Inverters 2 x CPS SCA36KTL-DO/US-480 36 kWac Inverters
3	2 x Tee Cantilever Parking Canopy Systems 1 x Semi Cantilever Parking Canopy System
1	AlsoEnergy Data Acquisition System (DAS) Package
2	Chargepoint CT4021-GW1 Dual Port Level 2 EV Chargers

Indicative Site Plan

Site Name Roslyn DOTI Complex

SRC Number: TBD

Address: 5440 Roslyn St, Denver CO 80216.

Solar System Application: Parking Canopy

DC System Capacity– 523.3 kWdc

AC System Capacity – 446.0 kWac

Major System Components

Quantity	Product
1,150	Jinko Solar JKM455M-7RL3-TV 455 Wdc Bifacial Solar Modules
4	1 x CPS SCA60KTL-DO/US-480 60 kWac Inverter 7 x CPS SCA50KTL-DO/US-480 50 kWac Inverters 1 x CPS SCA36KTL-DO/US-480 36 kWac Inverter
1	APA ReadyRack Fixed Ground Mounting System
1	AlsoEnergy Data Acquisition System (DAS) Package

Indicative Site Plan

A sufficient Indicative Site Plan shall be provided to the City showing 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, and shall show EV Charging Equipment locations.

Site Name National Western Center Maintenance and Operations Building

SRC Number: SRC083128

Address: 5125 Race Ct, Denver CO 80216

Solar System Application: Rooftop – Flat Roof

DC System Capacity– 282.3 kWdc

AC System Capacity – 220.0 kWac

Major System Components

Quantity	Product
697	Jinko Solar JKM405M-72HL-V Solar Modules
4	2 x CPS SCA60KTL-DO/US-480 60 kWac Inverters 2 x CPS SCA50KTL-DO/US-480 50 kWac Inverters
1	PanelClaw ClawFR10 Ballasted Flat Roof Mounting System
369	Tigo TS4-A-2F Rapid Shutdown Device
1	AlsoEnergy Data Acquisition System (DAS) Package

Indicative Site Plan

GENERAL NOTES

- A. REFER TO EXISTING PLANS OR CHECK WITH THE ARCHITECT FOR ADDITIONAL LOCATION DETAILS.
- B. UNDESICRIBED EXISTING ACCESS SHALL BE PROVIDED TO ALL EXISTING EQUIPMENT.
- C. UNDESICRIBED EXISTING EQUIPMENT SHALL BE PROVIDED TO ALL EXISTING EQUIPMENT.



SEATTLE
500 5TH AVENUE, S
PO BOX 28097
SEATTLE, WA 98102
1-800-855-5320

PROJECT:
NATIONAL WESTERN CENTER MAINTENANCE & OPERATIONS BUILDING PV
5125 Race Court, Denver, CO 80216



REVISIONS

NO.	DATE	DESCRIPTION
1	11/11/16	ISSUE FOR CONSTRUCTION
2	11/11/16	ISSUE FOR CONSTRUCTION

DESIGNED BY:
DRAWN BY:
CHECKED BY:
DATE: 11/11/16
SCALE: AS SHOWN
PROJECT:
SITE PLAN



SHEET NUMBER
ES-100

Site Name National Western Center Stockyard Events Center

SRC Number: SRC083135

Address: 5004 Packing House Rd, Denver CO 80216

Solar System Application: Rooftop – Pitched Roof

DC System Capacity– 268.5 kWdc

AC System Capacity – 210.0 kWac

Major System Components

Quantity	Product
663	Jinko Solar JKM405M-72HL-V Solar Modules
4	1 x CPS SCA60KTL-DO/US-480 60 kWac Inverters 3 x CPS SCA50KTL-DO/US-480 50 kWac Inverters
1	IronRidge XR Pitched Roof Flush Mounting System
351	Tigo TS4-A-2F Rapid Shutdown Device
1	AlsoEnergy Data Acquisition System (DAS) Package

Indicative Site Plan



McKinstry Call Center
 5000 3RD AVENUE S.E.
 SEATTLE, WA 98134
 206.461.8800

NATIONAL WESTERN CENTER STOCK YARDS EVENT CENTER PV
 5004 Packing House Rd.,
 Denver, CO 80216

NOT FOR CONSTRUCTION

NO.	DATE	REVISION
1	01/11/17	ISSUE FOR PERMITTING
2	02/02/17	REVISED PER PERMITTING
3	03/01/17	REVISED PER PERMITTING
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20	03/01/17	REVISED PER PERMITTING

PROJECT: NATIONAL WESTERN CENTER STOCK YARDS EVENT CENTER PV
 SHEET NO.: ES-100
 DATE: 03/01/17

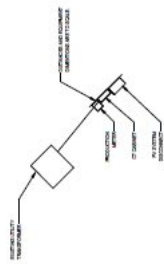
ES-100

GENERAL NOTES
 1. REFER TO ALL SHEETS FOR GENERAL NOTES.
 2. REFER TO ALL SHEETS FOR SPECIFICATIONS.
 3. REFER TO ALL SHEETS FOR DIMENSIONS.
 4. REFER TO ALL SHEETS FOR MATERIALS.
 5. REFER TO ALL SHEETS FOR FINISHES.
 6. REFER TO ALL SHEETS FOR UTILITIES.
 7. REFER TO ALL SHEETS FOR STRUCTURE.
 8. REFER TO ALL SHEETS FOR MECHANICAL/ELECTRICAL/PLUMBING.
 9. REFER TO ALL SHEETS FOR LANDSCAPE ARCHITECTURE.
 10. REFER TO ALL SHEETS FOR CIVIL ENGINEERING.
 11. REFER TO ALL SHEETS FOR ARCHITECTURE.
 12. REFER TO ALL SHEETS FOR INTERIORS.
 13. REFER TO ALL SHEETS FOR EXTERIORS.
 14. REFER TO ALL SHEETS FOR SPECIALTIES.
 15. REFER TO ALL SHEETS FOR OTHER CONTRACTORS.
 16. REFER TO ALL SHEETS FOR OTHER PROFESSIONALS.
 17. REFER TO ALL SHEETS FOR OTHER AGENCIES.
 18. REFER TO ALL SHEETS FOR OTHER REGULATORY AGENCIES.
 19. REFER TO ALL SHEETS FOR OTHER REGULATORY AGENCIES.
 20. REFER TO ALL SHEETS FOR OTHER REGULATORY AGENCIES.



1 SITE PLAN
 DATE: 03/01/17
 ES-100

McKinstry
 5000 3RD AVENUE S.E.
 SEATTLE, WA 98134
 206.461.8800



2 ENLARGED EQUIPMENT PLAN
 DATE: 03/01/17
 ES-100

Site Name: DPS Northeast Early College

SRC Number: TBD

Address: 1200 E 45th Ave, Denver, CO 80239

Solar System Application: Parking Canopy

DC System Capacity– 308.5 kWdc

AC System Capacity – 243.0 kWac

Major System Components

Quantity	Product
678	Jinko Solar JKM455M-7RL3-TV 455 Wdc Bifacial Solar Modules
6	1 x CPS SCA60KTL-DO/US-480 60 kWac Inverters 1 x CPS SCA50KTL-DO/US-480 50 kWac Inverters 3 x CPS SCA36KTL-DO/US-480 36 kWac Inverters 1 x CPS SCA25KTL-DO-R/US-480 25kWac Inverters
4	Tee Cantilever Parking Canopy Systems
1	AlsoEnergy Data Acquisition System (DAS) Package
2	Chargepoint CT4021-GW1 Dual Port Level 2 EV Chargers

Indicative Site Plan

A sufficient Indicative Site Plan shall be provided to the City showing 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, and shall show EV Charging Equipment locations.

EXHIBIT D

PROJECT TRANCHE ONE - RDCS I

Attachment 3 – REC Incentive Rate, Subscription Mix/Rates, and Subscriber Allocations

DESCRIPTION

This Attachment outlines the Generating Facilities included in the Project Tranche awarded capacity through the Xcel Energy Solar*Rewards Community Solar Program and their respective subscriber mix, subscriber rates, and REC Incentive rates.

A. REC Incentive Rate

1. The REC Incentive rate for the RDCS I tranche is \$0.04671 per kWh.

B. Direct Billed Income Qualified Household Subscriber Allocation and Rates

1. Direct-billed income-qualified households: The Operator shall strive to subscribe approximately 10% of the solar portfolio output directly to income-qualified households in the City and County of Denver. Income-qualified subscriptions shall be facilitated by a qualified organization as determined by the City such as Energy Outreach Colorado and structured to minimize the administrative burden on the household (i.e., avoiding two ongoing utility bills).
 - i. Income-qualified residential SRC Subscribers shall receive donated allocations in 4 kW-AC increments. The Operator may assign alternative subscription allocation increments with approval of the City.
 - ii. Income-qualified households must have no ongoing billing requirements or fees associated with their subscription to the solar portfolio.
 - iii. Eligibility criteria for income-qualified households shall conform with 4 CCR 723-3 and must be approved by the City. The Operator may use alternative eligibility criteria with approval of the City.
 - iv. The Operator may reassign subscriptions without approval of the City should the subscriber lapse, move out of Denver, or otherwise become ineligible for the allocated subscription. Reassigned subscribers shall meet the eligibility criteria for low-income qualified households, unless otherwise approved by the City.

C. Non-direct Billed Income Qualified Customers

1. Non-direct Billed Income Qualified Customers as approved by the City, such as the Denver Housing Authority, shall receive a 25% indexed discount vs the applicable Solar Rewards Community Service (“SRCS”) bill credit applied by Xcel Energy.

D. General SRC Subscriber Rates

1. All non-income qualified subscribers shall receive a 10% indexed discount vs the applicable SRCS bill credit applied by Xcel Energy.

E. General SRC Subscriber Partners and Allocations

1. Portfolio allocations for Site Host partners shall be based on their share of AC portfolio capacity, with a 20% deduction for low-income qualified subscriptions.
2. The Operator shall strive to allocate low-income qualified subscriber allocations into a 100% low income solar garden site so as to maximize potential REC incentive revenue for the City.
3. The Operator may assign alternative portfolio allocations with approval of the City.
4. Below is the list of the SRC Subscriber partners and approximate allocations for this Project Tranche.
5. The subscriber partners, hosted AC capacity and allocations may change based on final designs and locations of the Generating Facilities.
6. The subscriber partners may change pending the identified partners willingness to execute a Property lease/license or subscription agreement.

Organization	Hosted DC-Capacity	Approx. Portfolio Allocation (kW-AC)	Approx. Portfolio Allocation (%)
Denver International Airport	1,251	1,001	22%
National Western	558	446	10%
Denver Parks/DOTI/General Services	2,458	1,548	34%
Denver Public Schools	309	247	5%
Denver Housing Authority	0	876	19%
Income Qualified Residential	0	458	10%
Total	4,576	4,576	100%

EXHIBIT D**PROJECT TRANCHE ONE - RDCS I****Attachment 4 – Development, Design and Construction, and Interconnection Budgets****RDCS I PORTFOLIO PROJECT BUDGETS**

Site Name	SRC Number	Development Budget	Design Budget	Construction Budget
DEN #1	SRC083127	\$126,248	\$52,472	\$1,277,383
DEN #2	SRC083136	\$126,248	\$52,472	\$1,277,383
Central Park Rec Center	SRC083131	\$140,122	\$58,784	\$2,177,375
Harvard Gulch Rec Center	SRC083134	\$99,976	\$49,117	\$1,188,337
Montello Rec Center	SRC083126	\$133,511	\$57,708	\$2,043,350
Lowry Tennis Courts	SRC083129	\$114,358	\$52,029	\$1,631,071
Roslyn DOTI Complex	TBD	\$142,281	\$46,170	\$1,944,298
NE Early College	TBD	\$113,026	\$38,040	\$1,246,932
M&O Building	SRC083128	\$63,695	\$20,408	\$677,033
SYEC Building	SRC083135	\$63,492	\$20,713	\$646,520
Totals		\$1,122,955	\$447,913	\$14,109,683

Interconnection Costs: The Construction Budgets listed above include interconnection upgrade costs as quoted by the utility for all sites except DEN #1, DEN #2, NE Early College, and Roslyn DOTI Complex. McKinstry has listed best faith estimates for sites where utility quotes have not yet been provided. All costs are listed below for illustrative purposes only.

Site Name	Estimated Interconnection Costs
DEN #1	\$43,000
DEN #2	\$43,000
Central Park Rec Center	\$26,700
Harvard Gulch Rec Center	\$27,700
Montbello Rec Center	\$39,600
Lowry Tennis Courts	\$49,300
Roslyn DOTI Complex	\$49,000
NE Early College	\$30,000
M&O Building	\$5,700
SYEC Building	\$5,700
Totals	\$319,700

Note: The Parties recognize and agree that these Budgets would change if the Properties used for the Generating Facility change.

EXHIBIT D**PROJECT TRANCHE ONE - RDCS I****Attachment 5 – Asset Management Fee Schedule**

Cost Item	Cost	Notes
Asset Management	\$ 198,579	Fixed Fee

Fee Terms

- The fixed fee shall be invoiced to the City in twelve (12) equal payments.
- The fixed fee shall escalate at a rate of 2.5% annually
- This fee structure shall be in effect for five years from the effective date of this Agreement. Prior to the expiration of this fee structure the Parties, acting in good faith, shall negotiate a fee structure for an additional period of time. The Operator shall propose a fee structure, submit to the City evidence of its basis for the fee structure, and provide the City with any additional information regarding the basis for the proposed fee structure the City reasonably requests. Once agreed upon by the Parties, the new fee structure shall be effective upon the five year expiration of the original fee structure or as otherwise agreed upon by the Parties.
- Corrective Maintenance, Extraordinary Maintenance or other approved services and reimbursable expenses as outlined in exhibit B shall be added to the monthly Asset Management invoice, as applicable.
- The Parties recognize and agree that this fee schedule could change if the Properties used for the Generating Facility change or if the final designs of the Generating Facilities change.

EXHIBIT D

PROJECT TRANCHE ONE - RDCS I

Attachment 6 – Community Engagement and Workforce Plan

During the construction phase of the project, the Operator will provide community engagement and workforce benefits that include, but are not limited to:

Workforce Training Program

The Operator will conduct 4 Solar Training Academies (STA) enrolling an average of 10 trainees per cohort who are income-eligible Denver residents. Each STA includes the following:

- Two weeks of paid training
- Safety certifications
- Hands-on installation experiences

Employment Opportunities

A target of at least 10% of the workforce for the RDCS I portfolio (limited to solar specific installation scopes) will be hired from the STA programs, solar training program alumni, or through other organizations or contractors that provide workforce opportunities for underserved communities as categorized by the Work Opportunity Tax Credit. This will be a requirement for all subcontractors performing solar specific related scopes and part of the selection criteria.

Solar Futures Lab

The Operator will visit 10 Denver Public School classrooms in-person or virtually to present Solar Futures curriculum, details to be determined in collaboration with Denver Public Schools and City. In-person training may need to be adjusted in light of COVID-19 restrictions.

Installation Basics Training

Operator shall conduct two (2) Solar Installation Basics Training (IBT) Lab Lite Programs for Denver Public Schools students. IBT entails intensive in-person training for up to 10 students per training. Final IBT details to be determined in collaboration with Denver Public Schools and the City. In-person training may need to be adjusted in light of COVID-19 restrictions.

Community Engagement

The Operator will support the City with stakeholder engagement as relevant to communicate project engagement opportunities. The Operator will work with the City to leverage community partnerships to maximize the overall impact of this project on low-income residents.

Solarthon Event

The Operator will lead a minimum of one Community Solarthon/community engagement event. A Solarthon may include hands on installation opportunities, catered lunch for participants, and a post installation celebration featuring community members, political figures, entertainment, clients, keynote speakers, and job trainees. The actual scope, schedule, and activities of the Solarthon is dependent on-site selection and the Operator shall develop the event in collaboration with the City. In-person events may need to be limited or adjusted in light of COVID-19 restrictions.

STEM Learning

The Operator will strive to incorporate STEM learning opportunities for local students. These activities may include but are not limited to STEM Mentoring and Internships through the DPS Career and College Success Program and STEM Scholarships to graduating seniors who have participated in the STEM Mentor program.

Additional Community Engagement Events

The City may request the Operator to hold additional community engagement events at additional cost to the City. These additional cost would be:

1. Solar Training Academy
 - 1 STA with 7 trainees (if required due to COVID restrictions): \$49,500
 - 1 STA with 10 trainees: \$59,500
2. Solar IBT Lab Lite Programs for Students: \$25,000 per lab
3. Solar Futures visits: \$2,500 per visit
4. Solarthon: TBD, price dependent on scale of event.

EXHIBIT D

PROJECT TRANCHE ONE - RDCS I

Attachment 7 – Xcel Energy Producer Agreement

The Parties understand and agree that a Producer Agreement must be entered into between the Operator, acting as the SRC Producer, and Xcel Energy for each Solar Garden, in a form substantially the same as the following:



Solar Garden ID No. _____

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

This Agreement is made and entered into this ___ day of _____, 20___, by and between Public Service Company of Colorado, d/b/a/ Xcel Energy (“Public Service” or “Company”), a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202, and _____ (“SRC Producer”), a _____, whose business address is _____, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS:

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

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

ARTICLE I
DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS

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

2.2 SRC Credits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

TERM, COMMERCIAL OPERATION AND PERFORMANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V

PRODUCTION METER AND INTERCONNECTION

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

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

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

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

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

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

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

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

ARTICLE VI

FORCE MAJEURE

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

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

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

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

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

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

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

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

ARTICLE VII
DEFAULT, REMEDIES AND DISPUTE RESOLUTION

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

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

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

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

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

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

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

ARTICLE VIII
LIABILITY AND INDEMNIFICATION

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

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

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

ARTICLE IX **LAWS AND REGULATORY BODIES**

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

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

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

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

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

ARTICLE X

MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

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

If to Public Service:

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

If to SRC Producer:

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

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

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

SRC Producer

SRC Producer Name (printed): _____

SRC Producer Representative: _____

Title: _____

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

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

By: _____

Date: _____.

Title: _____

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

Solar Garden ID No. _____

Exhibit A
to
Solar*Rewards Community Producer Agreement

DESCRIPTION OF SOLAR GARDEN SITE:

Exhibit B
to
Solar*Rewards Community Producer Agreement

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

SRC Subscriber Name: _____

SRC Subscriber Retail Customer Account No.: _____

SRC Subscriber Service Address: _____

SRC Subscriber E-mail Address: _____

SRC Subscriber Mailing Address: _____

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

SRC Producer (Subscriber Organization) Name: _____

Solar Garden ID No: _____

Name and Location of Solar Garden: _____

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

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

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

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

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

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

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

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

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

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

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

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

SRC SUBSCRIBER

SRC PRODUCER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit C
to
Solar*Rewards Community Producer Agreement

Construction Milestones

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

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

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

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

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

[____]

EXHIBIT D

PROJECT TRANCHE ONE - RDCS I

Attachment 8 – Site Lease and/or License General Terms

The lease or license will include terms substantially the same as the terms as follows:

1. **Due Diligence Period:** Up to 18 months beginning on execution of the Lease. During this period, City and McKinstry will conduct due diligence including environmental review, survey, title work, design, geotechnical evaluation, permitting etc. to ensure suitability of Premises. City shall have the option to terminate the Lease during the Due Diligence Period. City shall have the option to extend the Due Diligence Period for up to 1 additional year by providing notice to Landlord prior to the end of the Due Diligence Period.
2. **Construction Term:** The “Construction Term” shall begin on the date that City begins construction of the System on the Leased Premises as confirmed by written notice from City to Landlord and shall terminate on the Commercial Operation Date of the solar operation. The “Commercial Operation Date” is the date on which the solar operation has received required licenses and permits, has been granted permission to operate by the utility service provider and has been placed in service for federal income tax purposes. If the Construction Term is not initiated prior to the end of the Due Diligence Period, the Lease shall automatically terminate.
3. **Operational Term and Extension of Lease:** The “Operational Term” shall begin on the Commercial Operation Date and shall terminate on the twentieth anniversary thereafter. City may extend the Operational Term for up to two additional five-year period(s) (each an “Extension Term” and collectively, the “Extension Terms”) by providing written notice to Landlord prior to expiration of the then-existing term. The Operational Term together with any Extension Terms is collectively referred to as the “Term”.
4. **Rent:** City shall pay to Landlord for rent of the Leased Premises the sum of ten dollars (\$10.00) per year or Two-Hundred Dollars (\$200.00) for the Term. As additional consideration, Landlord shall be entitled to purchase the right to receive certain credits and discounts associated with energy generated by the solar operation of the Renewable Denver Community Solar initiative pursuant to a separate Solar Power Subscription Agreement entered into by Landlord and Operator per the attached subscription terms.
5. **Premises Delivery Condition:** As-is
6. **Direct Access to Sunlight:** Landlord will not erect or allow to be erected anything that unreasonably interferes with direct access to sunlight
7. **Access to Premises:** City will have direct access from road or parking lot to Premises for purposes of construction, maintenance, and repairs of the System
8. **Security:** City will have option to include security provisions such as fencing and cameras
9. **Easement with Utility Provider:** Landlord shall grant a reasonable easement to Xcel Energy for purposes of feeding power generated by System to the grid
10. **Early Termination of Lease:** Landlord shall have the option to terminate the Lease with 6 months prior written notice to City. Should the Landlord terminate the Lease prior to the expiration of the Lease Term, Landlord shall be responsible for reasonable costs of system removal and payment of the termination fee per the attached schedule
11. **Restoration at End of Term:** City will restore Premises to its original condition, reasonable wear and tear excepted, after the expiration or earlier termination of the Lease. City shall have no obligation to remove

any roads constructed on the Premises or adjacent property, or any subsurface improvements. All equipment removed by City shall remain property of the City at expiration of the term