Department of General Services
PURCHASING DIVISION
www.denvergov.org/purchasing
Phone: 720.913.8100
FAX: 720.913.8101

City and County of Denver
Purchasing Division
201 W. Colfax Ave.
Department 304, 11th Floor
Denver, CO 80202

Buyer: Brenda Hannu
Email: brenda.hannu@denvergov.org

REQUEST FOR PROPOSAL No. 29151Q

Solar Photovoltaic Electric Systems Developer

SCHEDULE OF EVENTS

Event	Date	Time	
• RFP Issued	4/23/2020		
• Pre-bid Conference	4/29/2020	2:00 P.M.	Local Time
• Deadline to Submit Additional Questions	5/3/2020	11:59 P.M.	Local Time
• Response to Written Questions	5/7/2020		
• Proposal Due Date	5/14/2020	11:59 P.M.	Local Time

Vendor offers to furnish to the City and County of Denver the materials, supplies, products or services requested in accordance with the specifications and subject to the Terms and Conditions described herein.

VENDOR SIGN HERE

Company: ______________________________

Address: ______________________________

Contact: ______________________ | ______________________
(Authorized Signature) **(Print Name)**

Signature constitutes acceptance of all Terms and Conditions listed on this form and all documents attached.

Email: ______________________________

Phone: ______________________________

The City contracts with Rocky Mountain E-purchasing System (BidNet®) in the advertisement and facilitation of solicitations administered by the City's General Services Purchasing Division; therefore, respondents must ONLY rely on documents provided on the Rocky Mountain E-purchasing System (BidNet®) website or as communicated directly from the buyer. Only rely on this web address: https://www.bidnetdirect.com/colorado

THIS PROPOSAL MUST BE RETURNED ELECTRONICALLY THROUGH THE ROCKY MOUNTAIN E-PURCHASING SYSTEM (BIDNET®).

Table of Contents

A.1 PURPOSE: 3
A.2 ROCKY MOUNTAIN E-PURCHASING (BidNet®): 3
A.3 PRE-PROPOSAL CALL 3
A.4 SUBMISSION OF PROPOSALS: 3
A.5 RFP QUESTIONS: 4
A.6 ADDENDA: 4
A.7 ALTERNATE RESPONSES: 4
A.8 ACCEPTANCE PERIOD: 5
A.9 PRICING INSTRUCTIONS: 5
A.10 TECHNICAL REQUIREMENTS/STATEMENT OF WORK: 5
A.11 RFP CONDITIONS AND PROVISIONS: 5
A.12 GRATUITIES AND KICKBACKS: 6
A.13 NON-COLLUSIVE VENDOR CERTIFICATION: 6
A.14 EVALUATION AND AWARDS: 6
A.15 PRODUCT/PERFORMANCE LITERATURE: 7
A.16 ENVIRONMENTAL MANAGEMENT SYSTEM, ENVIRONMENTAL POLICY, AWARENESS, AND COMPLIANCE: 7
A.16.a Environmentally Preferable Purchasing (EPP) Guidance and Prohibitions: 8
A.17 DISCLOSURE OF CONTENTS OF PROPOSALS: 8
A.18 PROOF OF REGISTRATION WITH THE COLORADO SECRETARY OF STATE: 8
A.19 DIVERSITY AND INCLUSIVENESS – EXECUTIVE ORDER #101: 8
SECTION B: SCOPE OF WORK AND TECHNICAL REQUIREMENTS 10
B.1 BACKROUND: 10
B.2 PURPOSE: 10
B.3 SCOPE OF WORK: 11
B.3.a TECHNICAL REQUIREMENTS 12
B.4 PROPOSER QUESTIONS AND REQUIREMENTS: 15
B.5 TERM OF CONTRACT: 17
B.6 COOPERATIVE PURCHASING: 17
B.7 VENDOR PERFORMANCE MANAGEMENT: 17
SECTION C: PRICING 18
C.1 PRICING INFORMATION: 18
C.2 PRICING INSTRUCTIONS: 18
C.2.a Additional Pricing Information and Pricing Narrative 19
SECTION D: SAMPLE CONTRACTS 20
SECTION E: ADDITIONAL REQUIRED INFORMATION 21
E.1 MASTER SERVICE AGREEMENT CERTIFICATION FORM: 21
E.2 CSG SUBSCRIPTION TEMPLATE CERTIFICATION FORM: 22
E.3 SOLAR LEASE TEMPLATE CERTIFICATION FORM: 23
E.4 REFERENCE LISTING: 24
E.5 DENVER VENDOR SUSTAINABILITY: 25
E.6 VENDOR INFORMATION: 26
E.1 VENDOR'S CHECK LIST: 27

GENERAL INFORMATION & PROPOSAL INSTRUCTIONS

A.1 PURPOSE:

The City and County of Denver, hereinafter referred to as the City, desires to obtain competitive proposals **for a Solar Project Development Partner (Developer).**

A.2 ROCKY MOUNTAIN E-PURCHASING (BidNet®):

The City is collaborating with Rocky Mountain E-purchasing System (BidNet®) in the advertisement and facilitation of Formal Bids and RFPs administered by the City's General Services Purchasing Division.

It is a requirement of this Formal Bid / Request for Proposals (RFP) that interested parties familiarize themselves and register with BidNet®; proposer/ contractors who do not register may be considered non-responsive.

Registration with BidNet® is available at NO CHARGE and allows proposers access to view governmental bids posted on BidNet®; they offer an additional notification service option with an associated fee. It is the responsibility of the proposer/ contractor to evaluate and select the service option of their choice.

The City is not responsible for the actions or lack thereof on the part of the proposer / contractor in regards to their interaction with BidNet®, or any other third-party bid notification service in relation to this Formal Bid/RFP.

More information is available at: www.rockymountainbidsystem.com or by calling 1-800-835-4603.

A.3 PRE-PROPOSAL CALL

A pre-proposal conference call will be conducted the date and time listed in the Schedule of Events, front page. The Pre-Proposal call will be held via Skype. The proposal terms and conditions and specifications will be reviewed and discussed at this time.

Join Skype Meeting

Trouble Joining? Try Skype Web App

Phone Number: +1 (720) 388-6219,,321312067#

A.4 SUBMISSION OF PROPOSALS:

Submission of proposals for this solicitation may only be done electronically through BidNet®. Proposals must be submitted at www.rockymountainbidsystem.com, no later than the date and time indicated in the proposal.

Proposers who feel they are unable to prepare and submit an electronic submittal should submit a request in writing to the Buyer, no later than the Question due date, for permission and instructions for submitting a hardcopy proposal.

Your proposal shall consist of the following separate sections:

Section 1 – RFP Response
- a) Signed Cover Sheet
- b) Responses to questions in Section B.3
- c) Any additional technical information in support of your proposal
- d) Pricing Section C

Section 2 – Additional Required Information
- a) Response to proposed Sample Contract Terms and Conditions, Section E.1
- b) References, Section E.2
- c) Sustainability Information Sheet Section E.3
- d) Vendor Information Sheet, Section E.4
- e) Vendor Checklist, Section E.5
- f) W9 Form
- g) XO 101 Diversity & Inclusiveness Form (see link in Section A.18)

A.5 RFP QUESTIONS:

The City shall not be bound by and the Vendor shall not request or rely on any oral interpretation or clarification of this RFP. Therefore, any questions regarding this RFP are encouraged and should be submitted in writing by email to:

City Buyer: **Brenda Hannu**
E-Mail: brenda.hannu@denvergov.org

Questions received up to deadline to submit question in the Schedule of Events will be answered in writing per the Schedule of Events. Answers to questions from any Vendor will be provided to all Vendors.

All communications regarding this proposal shall only be through the City's buyer listed above. No communication is to be directed to any other City personnel.

A.6 ADDENDA:

In the event it becomes necessary to revise, change, modify or cancel this Proposal or to provide additional information, addenda will be issued and made available on BidNet® at www.rockymountainbidsystem.com. It is the responsibility of the proposer/ contractor to confirm that they have acquired all addenda related to this solicitation and they have reviewed/ complied with the requirements therein.

A.7 ALTERNATE RESPONSES:

It is our intent to solicit proposals that afford the City the most cost efficient, technically responsive proposal for the acquisition of the subject matter of this RFP. However, we recognize that there may be arrangements different from that requested hereunder that would offer additional benefits to the City while satisfying the applicable requirements of this RFP. Accordingly, you may submit alternative proposals

for consideration, which offer such additional benefits in addition to the requested baseline proposal. These alternatives will be evaluated in conjunction with the primary (baseline) approach for each proposal.

A.8 ACCEPTANCE PERIOD:

Proposals in response to this RFP shall indicate that they are valid for a period no less than 120 days from the closing date.

A.9 PRICING INSTRUCTIONS:

All prices quoted shall be firm and fixed. Pricing shall be in the format contained in the RFP. Alternative approaches for the pricing of the requested products and services may be provided, however, such alternate approaches shall be described separately and must be in addition to the required format in the pricing section. Do not include cost or price figures anywhere except in the cost and pricing section.

A.10 TECHNICAL REQUIREMENTS/STATEMENT OF WORK:

Section B of this RFP contains our proposed Statement of Work and/or Technical Requirements. This document shall form the basis of a Contractual Agreement covering the subject matter of this RFP. Exceptions or deviations to this proposal must not be added to the proposal pages, but must be on vendor's letterhead and accompany proposal. Any exceptions to this documentation will be taken into consideration when evaluating proposals submitted. The City reserves the right to reject any or all of your proposed modifications. The City welcomes cost saving proposals which still satisfy all technical and business objectives.

A.11 RFP CONDITIONS AND PROVISIONS:

This proposal must be signed by a duly authorized official of the proposing company. The completed and signed proposal (together with all required attachments) ***MUST be returned electronically through the Rocky Mountain E-purchasing System (BidNet® at*** www.rockymountainbidsystem.com***))*** on or before the time and date of the deadline shown on page one.

All participating Vendors, by their signature on the cover page, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. Any alteration, erasure or interlineation by the Vendor in this proposal shall constitute cause for rejection by the Manager of General Services. Exceptions or deviations to this proposal must not be added to the proposal pages, but must be on vendor's letterhead and accompany proposal. Should the City omit anything from this RFP which is necessary to a clear understanding of the work, or should it appear that various instructions are in conflict, then the Vendor shall secure written instructions from the Manager of General Services at least forty-eight (48) hours prior to the time and date shown in page one.

Typographical errors in entering quotations on your proposal may result in loss of award of this proposal.

All Vendors are required to complete all information requested in this proposal. Failure to do so may result in the disqualification of proposal.

The City reserves the right to postpone or cancel this RFP, or reject all proposals, if in its judgment it deems it to be in the best interest of the City to do so.

Unit price for each item shall be shown and shall be for the unit of measurement indicated. In case of error in extension of prices, the unit price will govern.

The Manager of General Services reserves the right to waive any technical or formal errors or omissions and to reject any and all proposal(s), or to award contract for the items hereon, either in part or whole, if he deems it to be in the best interests of the City to do so.

The successful Vendor shall be in complete compliance with all of the specifications, terms and conditions of this proposal as outlined above. The City shall have the right to inspect the facilities and equipment of the successful Vendor to insure such compliance.

The City shall not be liable for any costs incurred by vendor in the preparation of proposals or for any work performed in connection therein.

A.12 GRATUITIES AND KICKBACKS:

It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee (within six months of termination from City employment), or for any employee or former employee (within six months of termination from City employment) to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding of application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime vendor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

In the event that any gratuities or kickbacks are offered or tendered to any City and County of Denver employee, the proposal shall be disqualified and shall not be reinstated.

A.13 NON-COLLUSIVE VENDOR CERTIFICATION:

By the submission of this proposal, the vendor certifies that:

A. The proposal has been arrived at by the vendor independently and has been submitted without collusion with any other vendor.
B. The contents of the proposal have not been communicated by the vendor, nor, to its best knowledge and belief, by any of its employees or agents, to any person not an employee or agent of the vendor or its surety on any bond furnished herewith, and will not be communicated to any such person prior to the official opening of the proposal.
C. No vendor shall submit more than one proposal for this purchase. It shall be the responsibility of each vendor to obtain the prior written permission of the Director of Purchasing before proposal opening in every situation in which the vendor, due to corporate association or other affiliation, may be found to be impermissibly associated with another vendor. Failure to observe this requirement could result in all such affiliated proposals being rejected.

A.14 EVALUATION AND AWARDS:

The criteria to be used for the proposal evaluation include but are not limited to:

(a) Scope of Work (Section B)
(b) Pricing (Section C)
(c) Response to the City's proposed questions (Section B.3)
(d) Response to the City's proposed Sample Contract provisions

No weighting or relative importance of criteria is intended or implied by this list.

The City reserves the right to award to more than one proposer. The City may also request oral presentations as part of the evaluation process.

Any award as a result of this proposal shall be contingent upon the execution of an appropriate contract. Section D of this proposal contains our proposed terms and conditions. These terms and conditions shall form the basis of a Contract covering the subject matter of this proposal. If there is contention(s) with the Terms and Conditions, a brief explanation and alternative language, if any, should be included in your response to Section D. Any exceptions to the Terms and Conditions will be taken into consideration when evaluating proposals submitted. The City reserves the right to reject any or all of your proposed modifications.

A.15 PRODUCT/PERFORMANCE LITERATURE:

The undersigned vendor shall agree to furnish, upon the written request of the City's Buyer, any additional information needed to substantiate or clarify the design and/or performance characteristics of the materials or services that he/she proposes to furnish.

A.16 ENVIRONMENTAL MANAGEMENT SYSTEM, ENVIRONMENTAL POLICY, AWARENESS, AND COMPLIANCE:

Some City operations can pose risks to human health and the environment. Proactive environmental management can reduce risk and prevent harm.

The City is certified to the ISO 14001 international standard for Environmental Management System (EMS). The City's EMS ensures that all aspects of City operations with the potential to cause significant environmental impacts are proactively managed. Through the EMS, the City has adopted environmental procedures to ensure compliance with environmental requirements, protect workers and the public, conserve energy and resources, and prevent pollution. The EMS reinforces the City's position that each person providing products or services to the City and the City's business partners, is responsible for conducting activities in a manner that will protect public health and the health of their employees and protect the environment. The EMS also requires business partners ensure the competency of their staff with respect to their environmental impacts and duties.

All City business partners are required by statute, regulation, and contractual agreement to comply with all federal, state, and local environmental regulations and requirements when working for the City. The City's EMS requires all City business partners to be aware of the City's Environmental Policy; be aware of the environmental aspects their actions may impact; and implement practices to manage their actions in a manner that complies with environmental requirements and the City's environmental performance goals. The City's Environmental Policy outlines the City's commitment to environmental protection, continual improvement, and sustainability in all areas of City business and operations.

The Environmental Policy of the City may be found at:
https://www.denvergov.org/content/dam/denvergov/Portals/771/documents/EQ/EMS/2017%20Denver%20Environmental%20Policy.pdf.

A.16.a **Environmentally Preferable Purchasing (EPP) Guidance and Prohibitions:**

The City defines Environmentally Preferable products and services as having a lesser or reduced effect on human health and the environment when compared with competing products and services that serve the same purpose. The City's EPP evaluation may extend to raw materials acquisition, energy consumption in manufacturing and transport, packaging, recyclability, waste disposal, and many other factors.

A.17 DISCLOSURE OF CONTENTS OF PROPOSALS:

All proposals become a matter of public record and shall be regarded as Public Records, with the exception of those specific elements in each proposal which are designated by the proposer as Business or Trade Secrets and plainly marked "Trade Secrets", "Confidential", "Proprietary", or "Trade Secret". Items so marked shall not be disclosed unless disclosure is otherwise required under the Open Records Act. If such items are requested under the Open Records Act, the City will use reasonable efforts to notify the proposer, and it will be the responsibility of the proposer to seek a court order protecting the records, and to defend, indemnify, and hold harmless the City from any claim or action related to the City's non-disclosure of such information.

A.18 PROOF OF REGISTRATION WITH THE COLORADO SECRETARY OF STATE:

Successful vendors that are corporations or limited liability companies will be required to furnish a Certificate of Good Standing from the Colorado Secretary of State's Office, as proof that they are properly registered to do business in the State of Colorado, prior to finalization of award and contracting.

A.19 DIVERSITY AND INCLUSIVENESS – EXECUTIVE ORDER #101:

Definitions

Diversity**:** Diversity refers to the extent to which a contractor/consultant has people from diverse background or communities working in its organization at all levels, is committed to providing equal access to business opportunities and achieving diversity in procurement decisions for supplies, equipment, and services, or promotes training and technical assistance to diverse businesses and communities such as mentoring and outreach programs and business engagement opportunities.

Inclusiveness**:** Inclusiveness, for purposes of Executive Order No. 101, includes the extent to which a contractor/consultant invites values, perspectives and contributions of people from diverse backgrounds and integrates diversity into its hiring and retention policies, training opportunities, and business development methods to provide an equal opportunity for each person to participate, contribute and succeed within the organization's workplace. Inclusiveness also includes the extent to which businesses have an equal opportunity to compete for new business opportunities and establish new business relationships in the private and public sector.

Requirements

Using the attached form, entitled "Diversity and Inclusiveness in City Solicitations Information Request Form", please state whether you have a diversity and inclusiveness program for employment and retention, procurement and supply chain activities, or customer service, and provide the additional information requested on the form. The information provided on the Diversity and Inclusiveness in City Solicitations Request Form will provide an opportunity for City contractors/consultants to describe their own diversity and inclusiveness practices. Contractors/Consultants are not expected to conduct intrusive examinations of their employees, managers, or business partners in order to describe diversity and inclusiveness measures. Rather, the City simply seeks a description of the contractor/consultant's current practices, if any.

Diversity and Inclusiveness information provided by City contractors/consultants in response to City solicitations for services or goods will be collated, analyzed, and made available in reports consistent with City Executive Order No. 101. However, no personally identifiable information provided by or obtained from contractors/consultants will be in such reports.

Please link to the "Diversity and Inclusiveness in City Solicitations - Information Request Form" here.

If the link is unavailable, enter the following address into your web browser:
https://fs7.formsite.com/CCDenver/form341/index.html

***NOTE*: A DIVERSITY & INCLUSIVENESS FORM MUST BE RETURNED WITH YOUR PROPOSAL; OTHERWISE, YOUR PROPOSAL MAY BE REJECTED WITHOUT CONSIDERATION.**

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SECTION B: SCOPE OF WORK AND TECHNICAL REQUIREMENTS

B.1 BACKROUND:

In 2018, the City released its 80x50 Climate Action Plan, which sets the target for an 80% reduction in greenhouse gas emissions below 2005 levels by 2050. The plan includes goals, targets, and strategies needed to reduce community-wide greenhouse gas emissions in line with science-based targets of 2030 and mid-century carbon emissions reductions.

Emissions from the electricity generating sector are the largest source of emissions in Denver's community-wide greenhouse gas inventory. As a result, included in the 80x50 plan is a goal to achieve 100% renewable electricity for Government Buildings by 2025 and the broader Denver community by 2030. The City's commitment to the decarbonization of its electricity supply is faster than that required by Colorado law or committed to by Xcel Energy. The City believes that by encouraging rapid action, and by positioning our facilities and community assets as a proving ground for technology implementation and grid management, we increase our chances for success while assuring that the electric system remains reliable and affordable.

The Renewable Energy Denver Initiative (RE Denver Initiative), funded, in part, by a grant from the Department of Local Affairs (DOLA), is designed to demonstrate the value of holistically coordinated clean energy, education, community empowerment, transportation, and resilience efforts. Collaborative and mutually beneficial relationships throughout Denver's community, across City agencies, and with our local grid operator are necessary to achieve our climate and clean energy targets. The stated needs for the initiative are met by the holistic approach to community empowerment, decarbonization, and investment that we are pursuing. This includes but is not limited to:

1) Traditionally disadvantaged and vulnerable communities benefit from investments that improve their quality of life and provide relief from proportionally higher utility bills;
2) Students benefit from educational opportunities, a closer proximity to renewable energy project development, and interactions with clean energy and sustainability experts;
3) Community members benefit from increased access to lower-cost locally produced clean energy systems, access to electric vehicle charging infrastructure, and awareness of the actions being taken by their community leaders on their behalf;
4) The school district and Denver's municipal facilities benefit from lower electricity bills and energy subscriptions that contribute towards our clean energy targets;
5) Emergency management planning efforts benefit from access to renewable energy systems and facilities that are designed with grid reliability and community resilience in mind;
6) Grid operators benefit from access to grid connected distributed energy resources.

B.2 PURPOSE:

The City Office of Climate Action, Sustainability, and Resiliency (OCASR) issues this RFP to provide the selection process for a Solar Project Development Partner (Developer). The awarded Developer will negotiate, and ultimately execute a Master Services Agreement (MSA). The purpose of the MSA is to create a mechanism through which the Developer can work with the City to review available properties to select a portfolio for Community Solar Garden (CSG) development that will optimize available

resources and best achieve the objectives of the RE Denver Initiative. The MSA will also allow the Developer to subsequently:

1. Enter into Site Lease Agreements (SLA) that will allow the Developer to design, build, finance, own, operate, and maintain up to 15 megawatts alternating-current (MW-AC) solar photovoltaic (PV) electric generation systems, developed primarily as CSGs, on City property.
2. Enter into Power Purchase Agreements (PPAs) for a portion of the renewable electricity output.

The Developer must demonstrate the ability to coordinate with the City and work with Xcel Energy; residential neighborhood organizations; the general public; and industry stakeholders. The Developer will also be able to:

1. Demonstrate three years, minimum, of experience in developing and operating a CSG including selling CSG subscriptions to third parties, operating a CSG at a profit or alternative appropriate metric, and operating a CSG in accordance with applicable regulations.
2. Demonstrate the ability to design, construct, permit, finance, commission, and interconnect solar projects at the nameplate capacity scales indicated in this RFP.
3. Demonstrate their ability to coordinate with utilities, the City, and any host-facility personnel to ensure minimal disruption to business-as-usual host-facility operations due to maintenance or other asset management activities.
4. Demonstrate the ability to manage subscriber enrollment, billing, and coordination in a manner sufficient to meet the objectives of the RE Denver Initiative.
5. Demonstrate their ability to coordinate with utilities and the City to enable the co-location of Level 1 (120V) and Level 2 (240V) electric vehicle charging infrastructure at selected host sites.
6. Demonstrate the ability to coordinate with utilities and the City to ensure that the selected host sites can be coupled with energy storage systems in the future.
7. Show expertise in using renewable energy related programs, engagement, and investments to address equity issues and empower local communities.

B.3 SCOPE OF WORK:

The Developer, through the MSA, will work with the City to achieve the objectives of the RE Denver Initiative. The MSA will allow up to 15 MW-AC solar photovoltaic electric generation systems for a to-be-determined number of City sites/locations. This includes:

1. Reviewing rooftops, parking lots, and vacant land parcels and entering into SLAs to enable the development of a portfolio of CSGs across Denver.
2. Entering into PPAs with the City.
3. Providing Subscriber Management System services including enrollment, billing, and account management for RE Denver Initiative subscribers in a manner that enables the City's vision as it pertains to subscriber participation.
4. Adapting its approach to optimize the use of any received DOLA Grant funding or other resources in pursuit of the RE Denver Initiative objectives.

Proposers should not propose a specific portfolio of sites for development. Site finalization and selection will occur in partnership with the selected Developer and the City.

Site leases, power subscriptions, and all development activities are contingent upon approval from Denver's City Council, which may be influenced by the ability for the City to attain electricity cost savings compared to current utility bills and the requested DOLA Grant funding.

B.3.a **TECHNICAL REQUIREMENTS**

The technical requirements provide guidance for development for the MSA and any subsequent SLAs and PPAs. These requirements will be further refined during final scope negotiations and project kick-off and will most likely evolve as the project progresses. Developer teams are encouraged to propose innovative solutions and applicable best practices to address each of these requirements.

B.3.a.1 **Site Description and Requirements**

Proposers will be expected to demonstrate that they can adhere to the following features:

- All rooftop solar PV arrays must be mounted in a ballast only/non-penetrating mounting system.
- All solar canopies must be designed to accommodate snow loading and snow removal equipment and must not impede access for fire and emergency trucks and equipment.
- Proposers must demonstrate ability to design, construct, permit, finance, commission, and interconnect projects of this scale.
- The selected Developer will have open dialogue with relevant City staff.
- Each agreed upon site is anticipated to be contracted to an initial 20-year lease and may include options for lease extensions.
- The City is considering the option to assume ownership of solar arrays upon the end of the term. Proposals should include both this option, and the alternative, where ownership of the array will remain with the Developer.
- The City is interested in developing a diverse portfolio across the available site types.
- Proposers should not propose a specific portfolio of sites for development.
- The City is expecting to favor a use of the CSG Standard Offer Program[1]
- The City expects to meet the definition of a "Community-based project" for any CSGs bid into Xcel Energy's CSG RFP option.[2]

[1] Proceeding 19A-0369E establishes the 2020-2021 Renewable Energy Plan. The City is expecting the Standard Offer program to allow for CSGs up to 500 kW and to allow for 10MW annually on a first-come, first-serve basis.

[2] 4 CCR 723-3. Rule 3652(d). "Community-based project" means a project that meets the following three conditions: the project is owned by individual residents of a community, by an organization or cooperative that is controlled by individual residents of the community, by a local government entity, or by a tribal council; the project's generating capacity does not exceed 30 MW; and, there exists a

- The City reserves the option to connect some of the solar capacity as behind-the-meter systems through the Solar*Rewards or Net Metering programs.
- The City is looking for a reliable partner to optimize the City's available resources.

B.3.a.2 **Operations and Maintenance**

The RE Denver Initiative requires ongoing operations, maintenance and accountability from the Developer. The Developer must:

1. Demonstrate the ability to coordinate with utilities, the City, and any host-facility personnel to ensure minimal disruption to business-as-usual host-facility operations due to maintenance or other asset management activities.
2. Demonstrate the ability to ensure continued performance over the lifetime of the renewable energy assets.
3. Present a compelling approach to mitigate risk to the City, host sites, and subscribers if the renewable energy assets are sold during the agreement period.
4. Include options regarding the transfer of ownership, decommissioning, or alternative treatment of the renewable energy assets at the end of the agreement period.

B.3.a.3 **Subscriber Management**

Per Colorado Public Utility Commission (PUC) requirements, the City and any other single organization may each purchase up to 40% of the electricity generated by a CSG system. However, the intent is for at least 20% of the power generated to be made available to a blend of general community and low-income subscribers. The Developer must manage subscriber enrollment, billing, and coordination in a manner sufficient to meet the objectives of the RE Denver Initiative. This includes:

1. Allowing an anchor tenant, such as the City, to act as a flexible CSG subscriber.
    a. "Flexible CSG subscriber" means a retail customer of a utility who owns a variable subscription to a CSG that may equal up to the remainder of otherwise unsubscribed power for the CSG, and who has identified one or more premises served by the utility to which the CSG subscription shall be attributed.
2. Allowing subscriptions to be offered as equivalent to 100% of monthly kWh consumption.
3. Billing subscriptions based on an aggregate rate for the RE Denver Initiative portfolio (i.e., blended rate for rooftop, canopy, and groundmount sites rather than site-specific rates).
4. Low-income participation and benefits

resolution of support adopted by the local governing body of each local jurisdiction in which the project is to be located.

a. Working with the City and their partners to achieve at least 10% enrollment (on a kWh basis) for low-income subscribers (low-income subscribers as defined in the Rules Regulating Electric Utilities 4CCR 723-3).[3]
b. Demonstrating that the CSG subscription price for low-income subscribers, including any Xcel Energy Renewable Energy Credit incentives, must be at least 15% below the bill credit paid for solar production.

5. Providing an easy to understand sign-up process.
6. Energy consumption and production data sharing with the City.
7. A customer service approach that demonstrates understanding of the need to provide ongoing support and communication for subscribers and the capability and experience of the identified key personnel and management structure to deliver on that approach.

B.3.a.4 **Co-Location of EV Charging Infrastructure**

Siting of electric vehicle charging stations at schools and community centers will help the City provide more diverse locations for charging and expand access to charging for Denver residents.

1. The Developer should demonstrate the ability to coordinate with utilities and the City to enable the co-location of Level 1 and Level 2 electric vehicle charging infrastructure at selected host sites.
2. The Developer is not expected to propose system designs, location, or other specifics regarding electric vehicle charging infrastructure integration.
3. The Developer should include a separate accounting of costs associated with make-ready Level 1 and Level 2 electric vehicle charging infrastructure (presented as cost per charger).

B.3.a.5 **Energy Storage System Considerations**

The RE Denver Initiative recognizes that the City can strengthen community resilience through the deployment and integration of distributed energy resources.

1. The Developer should demonstrate the ability to coordinate with utilities and the City, including its Office of Emergency Management, to ensure that potential host sites can be coupled with energy storage systems in the future.
2. The Developer is not expected to propose system designs, sizing, location, or other specifics regarding energy storage system integration.

B.3.a.6 **Community Engagement and Empowerment**

The City is seeking a Developer that provides opportunities for City residents of all backgrounds to meaningfully participate in the clean energy transition.

[3] Rules Regulating Electric Utilities 4CCR 723-3. https://www.colorado.gov/pacific/dora/electricrules

- The City is interested in all proposals that maximize benefits to the community, particularly students, low-income, and environmental justice participants.
- The City is interested in a Developer that provides opportunities for City residents to gain technical skills and qualifications that are transferable outside the clean energy workforce.

B.4 PROPOSER QUESTIONS AND REQUIREMENTS:

Your proposal must specifically address each of the questions/issues that are listed below. The quality and detail of your responses will figure significantly in the overall evaluation of your proposal. Proposers are encouraged to give examples and provide additional information to support your compliance on each point. **To standardize the format of all proposals, Proposers are required to respond to all questions in the order given and to list the item number and restate the question prior to giving their answer.** Failure to comply with this requirement may result in your proposal being declared non-responsive.

1) **Executive Summary:** Includes:
   a) The name of the proposing firm or team;
   b) The name, title, mailing address, phone number and email address of the individual who will serve as the prime contact for future communications regarding the proposal;
   c) A brief synopsis of the proposal and the Proposer's relevant experience, capabilities, and project management approach; and,

2) **Table of Contents:** A listing of the individual sections of the proposal and their corresponding pages numbers.

3) **Team Information and Qualifications**: Provide the following information:
   a) The name(s) and address(es) of each participating firm, including major subcontractor(s), financing party(ies) and operation and maintenance firm(s);
   b) A description of the roles and responsibilities of each participating firm;
   c) An organizational chart illustrating the reporting lines and names, titles, firms, and roles for key participants of the proposed team; and
   d) For each key participant of the proposed team, include a brief statement of their qualifications, work location and project responsibilities. A one half-page resume for each key participant may be included as an attachment at the end of the proposal.

4) **Relevant Experience and Capabilities**: Provide the following:
   a) Demonstrate three years, minimum, of experience in developing and operating a CSG including selling CSG subscriptions to third parties, operating a CSG at a profit or alternative appropriate metric, and operating a CSG in accordance with applicable regulations.
      - A list and description of up to five (5) similar projects completed or underway by the prime contractor, in terms of project type, size, client type, and financing mechanism, projects completed by the prime Proposer. Include customer name, project location, capacity (kW), financial agreement with customer; and contact

name, title, phone number and email address. Indicate which, if any, of the proposed team members also participated in the project.
- A discussion of the proposed team's prior experience developing and managing community solar projects and participant agreements.

b) Demonstrate the ability to design, construct, permit, finance, commission, and interconnect projects of the scale indicated in this RFP.
c) Demonstrate your ability to coordinate with utilities, governmental entities, and any host-facility personnel to ensure minimal disruption to business-as-usual host-facility operations due to maintenance or other asset management activities.
d) Demonstrate your ability to manage subscriber enrollment, billing, and coordination in a manner sufficient to meet the objectives of the RE Denver Initiative.
e) Demonstrate your ability to coordinate with utilities and governmental entities to enable the co-location of Level 1 and Level 2 electric vehicle charging infrastructure at selected host sites.
f) Demonstrate your ability to coordinate with Xcel Energy and the City to ensure that the selected host sites can be coupled with energy storage systems in the future.
e) The Proposer should also include references from public sector entities and clients that are comparable to the City or other participating entities (see Section E.2).

5) **Project Management Approach**:
a) Project management: A description of the project and construction management, document control, and project administration approaches. Include a discussion of the risk management mechanisms and escalation processes that will ensure the successful completion of each project element.
b) Operation and Maintenance Requirements: The operation and maintenance activities required on a periodic basis. Include a discussion of expected equipment performance and replacement cycles over a twenty-year period.
c) Communication: A description of the Proposer's strategy for communicating work progress, changes in project status and all other relevant information to the City, other subscribers, parties, and stakeholders involved in the project.
d) Any suggestions or special concerns about which the City and Subscribers should be aware and what is expected of the City to make this project successful.

6) **Financials**: **To be provided as a separate pdf document and will be considered confidential.** Discuss the proposed team's financial ability to successfully complete the proposed work should include:
a. Demonstrated financial capability to deliver the Project. Proposers must submit the most recent annual report, or if an annual report is not available, the most recent annual profit/loss statement.
b. Viability of proposed financial structure including;
i. Reasonableness of desired project cost estimates.
ii. Demonstrated ability to secure project financing.
iii. Demonstrated ability to identify and apply tax credits

7) **Solar Production Risks**:
a) Provide a risk mitigation plan that ensures maintenance of a minimum of 90% of the rated output of the system.

8) **Community Engagement**: Demonstrate your expertise in using renewable energy related programs, engagement, and investments to address equity issues and empower local communities.
    a) Demonstrate how your proposal will provide benefits to the community, particularly students, low-income, and environmental justice participants.
    b) Demonstrate how your proposal provides opportunities for City residents to gain technical skills and qualifications that are transferable outside the clean energy workforce.

B.5 TERM OF CONTRACT:

The anticipated term of the Master Services Agreement resulting from this RFP process and the City's sample contract is anticipated to be the lesser of 5-years or upon the successful execution of SLAs totaling 15 MW-AC of nameplate solar capacity and completion of those solar projects between the Developer and the City. Each agreed upon site lease is anticipated to be contracted for a 20-year term.

B.6 COOPERATIVE PURCHASING:

The City and County of Denver encourages and participates in cooperative purchasing endeavors undertaken by or on behalf of other governmental jurisdictions, pursuant to Denver Revised Municipal Code Sec. 20-64.5. To the extent other governmental jurisdictions are legally able to participate in cooperative purchasing endeavors, the City and County of Denver supports such cooperative activities. Further, it is a specific requirement of this proposal or Request for Proposal that pricing offered herein to the City and County of Denver may be offered by the vendor to any other governmental jurisdiction purchasing the same products.

The successful vendor(s) must deal directly with any governmental agency concerning the placement of purchase orders, freight charges for destinations outside of the Denver Metro area, contractual disputes, invoicing, and payment. The City and County of Denver shall not be liable for any costs, damages incurred by any other entity.

B.7 VENDOR PERFORMANCE MANAGEMENT:

The Purchasing Department may administer a vendor performance management program as part this proposal and resulting contract. The purpose of this program is to create a method for documenting and advising the Purchasing Department of exceptional performance or any problems related to the purchased goods and services.

Propose as part of your response specific performance measures that may be used to develop a vendor performance management report card. Also provide any other data, criterion or methods that would be effective in measuring vendor performance over the life of this contract.

SECTION C: PRICING

C.1 PRICING INFORMATION:

This section shall include a description of the proposed costs and prices. All pricing information shall be limited solely to this section of your proposal. This section should address all requirements set forth in Section B as well as any other items pertinent to your proposal pricing. The requirements have been developed to allow the City to uniformly evaluate prices submitted for the work. Accordingly, you should follow these instructions carefully and provide all data requested in the formats specified herein and in any referenced attachments.

C.2 PRICING INSTRUCTIONS:

Developers should complete the following not-to-exceed pricing table. Estimates should be presented for a turnkey system, but not include interconnection costs or additional costs associated with make-ready electric vehicle charging infrastructure. Interconnection costs will be determined through additional analysis such as the interconnection study process with Xcel Energy.

System Type and Nameplate Capacity (kW-AC)	Not-to-exceed installed system cost ($/Watt-AC)[1]	Estimated Annual Electricity Output (kWh)	Estimated average power purchase agreement price ($/kWh)[4]
Rooftop[2]			
100			
250			
500			
1000			
2000			
5000			
Solar Canopy[3]			
250			
500			
1000			
2000			
5000			
Groundmount			
1000			
2000			
5000			

[1] Estimates should be for a turnkey system, but not include interconnection costs. Interconnection costs will be determined through additional analysis such as the interconnection study process with Xcel Energy.

[2] All rooftop solar PV arrays must be mounted in a ballast only/non-penetrating mounting system.

[3] All solar canopies must be designed to accommodate snow loading and snow removal equipment and must not impede access for fire and emergency trucks and equipment.

[4] Average pricing should be inclusive of ongoing operations and maintenance. PPA prices may ultimately vary by subscriber class (i.e., Government, Low-Income, Market Rate).

C.2.a **Additional Pricing Information and Pricing Narrative**

1. **Required**
    a. Separate accounting of costs associated with Solar Canopy support structures (presented as $/Watt, for the different nameplate capacity levels shown in Table 1)
    b. Separate accounting of costs associated with make-ready Level 1 (120V) and Level 2 (240V) EV charging infrastructure (presented as cost per charger).
    c. Documentation in support of pricing estimates.
2. **Optional**
    a. Specify any project development considerations that could influence the cost estimates.
    b. Provide a low-high cost range by system type if desired.
    c. Provide a separate accounting for cost estimates of corrective maintenance, spare parts, and major maintenance improvements throughout the project life if desired.
    d. Anticipated REC incentives from Xcel Energy should be accounted for separately if at all.
    e. Any other pertinent information.
3. **Notes**
    a. Pricing estimates should be cognizant that each site is anticipated to be contracted to a 20-year lease and may include options for lease extensions.
    b. The City is considering the option to assume ownership of solar arrays upon the end of the term. Pricing should include both this option and the alternative where ownership of the array will remain with the Developer.
    c. The City will be active in the recruitment and enrolling of subscribers

The rest of this page left intentionally blank

SECTION D: SAMPLE CONTRACTS

This section shall include your response to our proposed terms and conditions included in this Section D and shall form the basis for the preparation of a Contractual Agreement covering the subject matter of this RFP.

You shall respond in your proposal either that all terms and conditions are acceptable or that some are acceptable and some are not. Underline or highlight those words, phrases, sentences, paragraphs, etc. that are not satisfactory and note any exceptions by referencing the appropriate article number, a brief explanation and alternative language, if any, and submit same on a separate typewritten sheet. Any exceptions will be taken into consideration when evaluating your proposal.

Attachment A - Sample Master Service Agreement Template_FINAL
Attachment B - EXHIBIT A to Sample MSA_FINAL
Attachment C - CSG Subscription Template_FINAL
Attachment D - Solar Lease Template_FINAL

SECTION E: ADDITIONAL REQUIRED INFORMATION

E.1 MASTER SERVICE AGREEMENT CERTIFICATION FORM:

CITY AND COUNTY OF DENVER
DEPARTMENT OF GENERAL SERVICES

Request for Proposal: **29151Q Solar Photovoltaic Electric Systems Developer**

NOTICE: ANY PROPOSED MODIFICATIONS TO THE LANGUAGE OF THE CITY'S SAMPLE AGREEMENT MUST BE CONTAINED IN THE PARAGRAPHS BELOW OR ON A REDLINED VERSION OF THE SAMPLE AGREEMENT. ANY PROPOSER MODIFICATION THAT DOES NOT INCLUDE SPECIFIC LANGUAGE CHANGES MAY BE CONSIDERED NON-RESPONSIVE BY THE CITY AND PROPOSER WAIVES ANY RIGHTS TO NEGOTIATE THE SAMPLE AGREEMENT LANGUAGE AT A LATER TIME. THE FOLLOWING TERMS OF THE AGREEMENT ARE NON-NEGOTIABLE:

- Governing Law and Venue
- Payment
- Defense and Indemnification
- Discrimination in Employment
- Termination for Convenience
- Examination of Records

I, on behalf of the proposer identified below, hereby certify that I have read a copy of the sample agreement attached to the Proposal. I further hereby certify that it is the proposer's intent to agree to, and comply with each and every term and provision contained in the sample agreement and propose no modifications to the sample agreement except as follows (add additional line as necessary):

1) ____

2) ____

I understand that the language modification(s) stated above, if any, are offered for discussion purposes only and that the City reserves the right to accept, reject or further negotiate any and all proposed modification to the sample agreement. Proposer expressly agrees to all sample contract language where no modifications are proposed.

Company/Proposer Name: ____

Authorized Signature:____

Name (please print):____

Title: ____

Date: ____

E.2 CSG SUBSCRIPTION TEMPLATE CERTIFICATION FORM:

CITY AND COUNTY OF DENVER
DEPARTMENT OF GENERAL SERVICES

Request for Proposal: **29151Q Solar Photovoltaic Electric Systems Developer**

NOTICE: ANY PROPOSED MODIFICATIONS TO THE LANGUAGE OF THE CITY'S CSG SUBSCRIPTION TEMPLATE MUST BE CONTAINED IN THE PARAGRAPHS BELOW OR ON A REDLINED VERSION OF THE CSG SUBSCRIPTION TEMPLATE. ANY PROPOSER MODIFICATION THAT DOES NOT INCLUDE SPECIFIC LANGUAGE CHANGES MAY BE CONSIDERED NON-RESPONSIVE BY THE CITY AND PROPOSER WAIVES ANY RIGHTS TO NEGOTIATE THE CSG SUBSCRIPTION TEMPLATE LANGUAGE AT A LATER TIME. THE FOLLOWING TERMS OF THE AGREEMENT ARE NON-NEGOTIABLE:

- Governing Law and Venue
- Payment
- Defense and Indemnification
- Discrimination in Employment
- Termination for Convenience
- Examination of Records

I, on behalf of the proposer identified below, hereby certify that I have read a copy of the sample agreement attached to the Proposal. I further hereby certify that it is the proposer's intent to agree to, and comply with each and every term and provision contained in the sample agreement and propose no modifications to the sample agreement except as follows (add additional line as necessary):

1) ____

2) ____

I understand that the language modification(s) stated above, if any, are offered for discussion purposes only and that the City reserves the right to accept, reject or further negotiate any and all proposed modification to the sample agreement. Proposer expressly agrees to all sample contract language where no modifications are proposed.

Company/Proposer Name: ____________________________________

Authorized Signature:____________________________________

Name (please print):____________________________________

Title: ____________________________________

Date: ____________________________________

E.3 SOLAR LEASE TEMPLATE CERTIFICATION FORM:

CITY AND COUNTY OF DENVER
DEPARTMENT OF GENERAL SERVICES

Request for Proposal: **29151Q Solar Photovoltaic Electric Systems Developer**

NOTICE: ANY PROPOSED MODIFICATIONS TO THE LANGUAGE OF THE CITY'S SOLAR LEASE TEMPLATE MUST BE CONTAINED IN THE PARAGRAPHS BELOW OR ON A REDLINED VERSION OF THE SOLAR LEASE TEMPLATE. ANY PROPOSER MODIFICATION THAT DOES NOT INCLUDE SPECIFIC LANGUAGE CHANGES MAY BE CONSIDERED NON-RESPONSIVE BY THE CITY AND PROPOSER WAIVES ANY RIGHTS TO NEGOTIATE THE SOLAR LEASE TEMPLATE LANGUAGE AT A LATER TIME. THE FOLLOWING TERMS OF THE AGREEMENT ARE NON-NEGOTIABLE:

- Governing Law and Venue
- Payment
- Defense and Indemnification
- Discrimination in Employment
- Termination for Convenience
- Examination of Records

I, on behalf of the proposer identified below, hereby certify that I have read a copy of the sample agreement attached to the Proposal. I further hereby certify that it is the proposer's intent to agree to, and comply with each and every term and provision contained in the sample agreement and propose no modifications to the sample agreement except as follows (add additional line as necessary):

1) ____

2) ____

I understand that the language modification(s) stated above, if any, are offered for discussion purposes only and that the City reserves the right to accept, reject or further negotiate any and all proposed modification to the sample agreement. Proposer expressly agrees to all sample contract language where no modifications are proposed.

Company/Proposer Name: ____

Authorized Signature:____

Name (please print):____

Title: ____

Date: ____

E.4 REFERENCE LISTING:

Vendors shall furnish the names, addresses and telephone numbers of a minimum of three (3) firms or government organizations for which the vendor has provided similar projects:

Company Name ______________________

Address ______________________

Reference ______________________

Reference Email Address ______________________

Telephone Number ______________________

Project Name ______________________

Value $ ______________________

Company Name ______________________

Address ______________________

Reference ______________________

Reference Email Address ______________________

Telephone Number ______________________

Project Name ______________________

Value $ ______________________

Company Name ______________________

Address ______________________

Reference ______________________

Reference Email Address ______________________

Telephone Number ______________________

Project Name ______________________

Value $ ______________________

E.5 DENVER VENDOR SUSTAINABILITY:

The City encourages vendors to demonstrate a commitment to and experience in environmental sustainability and public health protection practices applicable to its line of products and/or services being procured in this proposal. See **Section A.15** of this proposal for the Denver Sustainability Policy and Guidance. The following are examples of areas that may be addressed.

Explain how your products and/or services support the City's goal of environmentally preferable purchasing:

- Manufacturing Process
- Product Content
- Transportation
- Packaging
- Performance
- End of Life
- Third Party Certification (Green Seal, Eco Logo, Design for the Environment, etc.)
- Other

____

____

____

Environmentally Preferred Purchasing Attributes

select all applicable attributes below

☐	**AQ**	**Indoor Air Quality - Product/Service**	☐	**LH**	**Less Harmful Content**	☐	**RC**	**Recycled Content**
☐	**AQ-M**	**Indoor Air Quality - Manufacturer**	☐	**LV**	**Low Volatile Organic Compounds - Product/Service**	☐	**RR**	**Reconditioned / Remanufactured**
☐	**AQ-V**	**Indoor Air Quality - Vendor**	☐	**LV-M**	**Low Volatile Organic Compounds - Manufacturer**	☐	**RU**	**Reusability**
☐	**BB**	**Bio-Based**	☐	**LV-V**	**Low Volatile Organic Compounds - Vendor**	☐	**RY**	**Recyclability**
☐	**BD**	**Bio-Degradable**	☐	**NA**	**No Attributes**	☐	**TB**	**Take-Back**
☐	**DY**	**Durability**	☐	**OA**╬	**Other Attributes - Product/Service**	☐	**WE**	**Water Efficiency**
☐	**EE**	**Energy Efficient - Product/Service**	☐	**OA-M**╬	**Other Attributes - Manufacturer**	☐	**3-M**	**Third party certifications - Manufacturer**
☐	**EE-M**	**Energy Efficiency - Manufacturer**	☐	**OA-V**╬	**Other Attributes - Vendor**	☐	**3-V**	**Third party certifications - Vendor**
☐	**EE-V**	**Energy Efficiency - Vendor**	☐	**PD**	**Product Disassembly Potential**			

╬ List *Other Attributes* (*if applicable*): ____

____

____

E.6 VENDOR INFORMATION:

Vendor Information

Business Name	Tax ID # (TIN or SSN)
Business Address	Telephone Number
City, State Zip	Fax Number
Order Address (If different from above)	Email
City, State, Zip	Ordering Email (If different from above)
Remittance Name	Vendor Entity Type (check one)
Remittance Address	☐ Individual ☐ LLP/LLC ☐ Partnership ☐ Sole Proprietor
City, State, Zip	☐ Corporation ☐ Government ☐ Exempt/Non-Profit ☐ Employee

Dun & Bradstreet Number	
SIC Code and/or NAICS Code	

Disadvantaged Business Enterprise (DBE) ☐ Yes ☐ No

Type (check all that apply)

- ☐ DBE Disadvantage Business Enterprise
- ☐ MBE Minority Business Enterprise
- ☐ WBE Women Business Enterprise
- ☐ SBE Small Business Enterprise
- ☐ SBEC Small Business Enterprise Concessions
- ☐ ACDBE Airport Concession Disadvantage Business Enterprise
- ☐ Other: ________________________________

Certification Source	
Certification Number	
Certification Beginning Date	
Certification Expiration Date	

E.1 VENDOR'S CHECK LIST:

The following check list should be used to ensure required documentation is attached to the proposal. If a document is not required for your proposal, write **n/a** in the blank.

1.	Have you signed the front page of the proposal?	________
2.	Have you reviewed all proposal prices, checked unit costs, extensions and totals?	________
3.	Have you included manufacturer's names and reference numbers, as applicable?	________
4.	Have you listed the quantities you will supply, as applicable?	________
5.	Have you supplied any alternatives or additional information on separate headed note paper?	__ **YES** __ **NO**
6.	Have you responded to or completed and included in your response **all** of the City's requirements, questions, forms, including the vendor sustainability form and other City requests (*where applicable*)?	________
7.	Have you assured that there is sufficient time to transmit this proposal electronically?	________
8.	Have you enclosed relevant technical literature or samples (*where applicable*)?	________
9.	Have you completed and included the XO-101 Diversity and Inclusivity Information Request Form as identified in **Section A.19**?	________

MASTER SERVICES A G R E E M E N T

THIS MASTER SERVICES AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a home rule and municipal corporation of the State of Colorado (the "City") and **_________**, a **______________** whose address is **________** (the "Consultant"), jointly ("the Parties").

The Parties agree as follows:

1. COORDINATION AND LIAISON: The Consultant shall fully coordinate all services under the Agreement with the Executive Director of Public Health and Environment, ("Executive Director") or, the Executive Director's Designee.

2. SERVICES TO BE PERFORMED:

a. As the Executive Director directs, the Consultant shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth on **Exhibit A, the Scope of Work and Budget,** to the City's satisfaction.

b. The Consultant is ready, willing, and able to provide the services required by this Agreement.

c. The Consultant 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 the Agreement and in accordance with the terms of the Agreement.

3. TERM: The Agreement will commence on the date of execution by all required signatories and will expire five (5) years thereafter (the "Term"). The term of this Agreement may be extended by the City under the same terms and conditions by a written amendment to this Agreement. Subject to the Executive Director's prior written authorization, the Consultant shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.

4. CONSIDERATION: The City shall have no payment obligation under this Agreement. The parties expressly acknowledge that the obligations of this Agreement are supported by good and adequate consideration, as set forth in detail in **Exhibit A**.

5. STATUS OF CONSULTANT: The Consultant is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the

Consultant 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. TERMINATION:

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

b. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Consultant 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 Consultant's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

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

d. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Consultant's possession, custody, or control by whatever method the City deems expedient. The Consultant 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 Consultant shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

7. 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 Consultant's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Consultant 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.

8. 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 Consultant. 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.

9. INSURANCE:

a. General Conditions: Consultant 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. Consultant 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, Consultant 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 Consultant. Consultant 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 Consultant. The Consultant 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:** Consultant shall provide a copy of this Agreement to its insurance agent or broker. Consultant may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Consultant certifies that the certificate of insurance attached as **Exhibit B**, 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. 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 Consultant'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 Professional Liability, and Excess Liability/Umbrella (if required) Consultant and 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, Consultant's insurer shall waive subrogation rights against the City.

e. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Consultant. Consultant shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Consultant agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

f. <u>Workers' Compensation/Employer's Liability Insurance</u>: Contractor 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. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor'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 Contractor executes this Agreement.

g. <u>Commercial General Liability</u>: Consultant 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. <u>Business Automobile Liability</u>: Consultant 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. <u>Additional Provisions</u>:

(i) 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 f 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:

(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) Consultant 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 Consultant will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

10. DEFENSE AND INDEMNIFICATION:

a. Consultant agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Consultant 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. Consultant'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. Consultant'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. Consultant 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 Consultant under the terms of this indemnification obligation. The Consultant 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.

11. 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 Consultant 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.

12. ASSIGNMENT; SUBCONTRACTING: The Consultant 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. Any assignment or subcontracting without such consent will be ineffective and void, and will be cause for termination of this Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Consultant shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

13. 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.

14. 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 Consultant receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

15. NO AUTHORITY TO BIND CITY TO CONTRACTS: The Consultant 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.

16. 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.

17. 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 Consultant 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 Consultant shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Consultant 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 Consultant by placing the Consultant's own interests, or the interests of any party with whom the Consultant 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 Consultant written notice describing the conflict.

18. 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 Consultant at the address first above written, and if to the City at:

Executive Director of Public Health and Environment or Designee
101 W. Colfax Avenue, Suite 800
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.

19. NO EMPLOYMENT OF ILLEGAL ALIENS 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 Consultant certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

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

c. The Consultant also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program.

(4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the 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 the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Consultant 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 illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any 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.

d. The Consultant is liable for any violations as provided in the Certification Ordinance. If Consultant violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to the City. Any such 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 Consultant from submitting bids or proposals for future contracts with the City.

20. DISPUTES: All disputes between the City and Consultant arising out of or regarding the Agreement 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.

21. 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).

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

23. COMPLIANCE WITH ALL LAWS: Consultant 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.

24. LEGAL AUTHORITY: Consultant 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 Consultant represents and warrants that he has been fully authorized by Consultant to execute the Agreement on behalf of Consultant and to validly and legally bind Consultant 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 Consultant or the person signing the Agreement to enter into the Agreement.

25. 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.

26. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

27. INTELLECTUAL PROPERTY RIGHTS: The City and Consultant 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 Consultant and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, "Materials"), shall be hereby granted to the City pursuant to an irrevocable, perpetual, worldwide, royalty-free, fully paid up, non-transferable license. The Consultant shall disclose all such items to the City and hereby assigns such license rights over to the City upon completion of the Project. For clarity and the avoidance of doubt, the City shall be permitted to use the license granted hereunder for an and all purposes related to or arising under this Agreement.

28. 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 Consultant'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.

29. ADVERTISING AND PUBLIC DISCLOSURE: The Consultant shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Consultant'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 Consultant 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.

30. CONFIDENTIAL INFORMATION:

a. City Information: Consultant acknowledges and accepts that, in performance of all work under the terms of this Agreement, Consultant 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. Consultant agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Consultant shall be held in confidence and used only in the performance of its obligations under this Agreement. Consultant shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent consultant 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 Consultant by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

31. ACCESS TO FEDERALTAXPAYER INFORMATION:

a. Performance: In performance of this contract, the Consultant agrees to comply with and assume responsibility for compliance by his, her or its employees with the following requirements:

(1) All work will be done under the supervision of the Consultant or the Consultant's employees.

(2) Any tax return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the Consultant will be prohibited.

(3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

(4) The Consultant certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Consultant at the time the work is completed. If immediate purging of all data storage components is not possible, the Consultant certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

(5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the Consultant will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

(6) All computer systems processing, storing, or transmitting federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.

(7) No work involving federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.

(8) The Consultant will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

(9) The agency will have the right to void the contract if the Consultant fails to provide the safeguards described above.

b. <u>Criminal/Civil Sanctions</u>:

(1) Each officer or employee or any person to whom returns or return information is or may be disclosed will be notified in writing. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than $1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(2) Each officer or employee or any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as $1,000 or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee (United States for federal employees) in an amount equal to the sum of the greater of $1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

(3) Additionally, it is incumbent upon the Consultant to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy

Act or regulations established under it, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

c. **Inspection:** The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the Consultant for inspection of the facilities and operations provided for the performance of any work under this Agreement. On the basis of such inspection, specific measures may be required in cases where the Consultant is found to be noncompliant with contract safeguards.

32. **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.

33. **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.

34. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** Consultant 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.

35. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Consultant 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.

EXHIBT A

SCOPE OF WORK

Solar Master Services Agreement

A. Scope of Work

Background:

Subject to completion of the deliverables set forth in Task 1, City & County of Denver ("City") and Consultant will:

1. Enter into site lease agreements ("Site Leases") allowing the Developer to design, build, finance, own, operate, and maintain up to 15 megawatts alternating-current ("MW-AC") solar photovoltaic electric generation systems, developed primarily as community solar gardens ("CSG"), on City property.
2. Enter into power purchase agreements ("PPAs") whereby the City will subscribe to a portion of the renewable electricity output.

The Developer is expected to work with the City to optimize any resources received through the Colorado Department of Local Affairs, Renewable Energy Challenge Grant to achieve the objectives of the RE Denver Initiative. The Developer is expected to provide construction invoices and/or other necessary information to ensure compliance with the grant requirements.

Note: This agreement is not exclusive and does not prohibit Denver from working with another solar provider (such as through General Services energy performance contracts for behind-the-meter solar or other CSG subscriptions). The agreement provides the legal authority enter into Site Leases and PPAs.

Deliverables:

Task 1: Solar Site Evaluation and Prioritization

Work with the City to identify and evaluate City-owned parking lots, rooftops, and vacant land parcels. Develop a Preferred Project Portfolio for municipally-hosted community solar gardens.

Task 1: Deliverables

1. **Site Evaluation.** Spreadsheet-based analysis for evaluated City properties to document key site attributes. This task is not a requirement for the Developer to evaluate every City property. The City will work with the Developer to identify promising properties to evaluate. Valuable site attributes to document may include,

a. Land Parcels: Location; Parcel Size; Evaluation of solar potential (kWh/year); Current use of parcel; Any known environmental issues; Land-use restrictions on the site; Equipment, buildings, debris, vegetation, and existing obstacles on the parcel; Notes of any attempt to develop solar on the property previously; Relevant files including photos, system design drawings, zoning maps, etc.
b. Parking Lots: Location; Lot size; Evaluation of solar potential (kWh/year); Lot description; Lot condition; Last repaving or construction; Next planned repaving or construction; Equipment/obstructions; Attempts to develop solar on the lot previously; Relevant files including photos, system design drawings, zoning maps, etc.
c. Rooftops: Location; Roof size; Evaluation of solar potential (kWh/year); Building description; Number of floors; Roof condition; Age of roof; Next planned re-roofing; Equipment/obstructions; Attempts to develop solar on the roof previously; Relevant files including photos, system design drawings, zoning maps, etc.
d. Interconnection Attributes: For all sites, notes on the ideal interconnection site and any necessary equipment or electric infrastructure upgrades.

2. **Preferred Project Portfolio.** Preferred site portfolio to accommodate up to 15 MW-AC in solar photovoltaic electric generation systems.
   a. Portfolio will be developed in coordination with and agreed upon by the City.
   b. Portfolio summary will include a list and map of selected sites, as well as details on the site attributes from deliverable 1.1.
      i. Selected sites will consider equity issues and community empowerment.
   c. PPA pricing will be considered and compared on an aggregate-basis across different portfolio options prior to selecting the Preferred Project Portfolio.
   d. The City reserves the option to connect some of the solar capacity as behind-the-meter systems through the Solar*Rewards or Net Metering programs.
3. **Siting and Pricing Terms and Agreements.**
   a. The Developer will work with the City to evaluate key project variables that impact the PPA electricity rate such as,
      i. Lease rate.
      ii. Lease term and extension options.
      iii. End of term ownership (i.e., the City assumes ownership of the solar arrays upon the end of the term. Task 1.3 will evaluate both this option and the alternative where ownership of the array will remain with the Developer).
   b. The Siting and Pricing Terms will inform and influence negotiations for the City and the Developer pertaining to Site Lease Agreements and PPAs in Tasks 2 and 3.

Task 2: Site Lease Agreements
Enter into Site Leases with the City. The Developer will design, build, finance, own, operate, and maintain up to 15 MW-AC solar photovoltaic electric generation systems, developed primarily as CSGs, on City property.

Task 2: Deliverable

1. **Site Leases.** The Developer can enter into a Site Lease for each site in the Preferred Project Portfolio.

Miscellaneous Site Lease Requirements:

1. There must be a subscription billing option where a customer can elect to subscribe a percentage of their monthly kWh consumption (i.e., 100% of customer electricity use, rather than 1% of CSG system output)
    a. This includes independently metered EV Chargers on the S-EV rate
    b. A minimum 20% of total annual electricity output must be allocated to residential customers (including low-income customers).
2. Low-income customers,
    a. must account for at least 10% of total annual electricity output (Low-income customers as defined by the Rules Regulating Electric Utilities 4 CCR 723-3).
    b. the CSG subscription price, including any Xcel Energy Renewable Energy Credit incentives, must be at least 15% below the bill credit paid for solar production.
3. CSG subscriptions must be offered on an aggregate rate across the 15 MW-AC portfolio.
4. Denver must have access to specific data elements pertaining to system performance and subscriber attributes. These elements are enumerated in Deliverable 4.3.

Task 3: Power Purchase Agreements
Enter into PPAs with the City for a portion of the renewable electricity output.

Task 3: Deliverable

1. **PPA(s).** The City can enter into one or several PPA(s) for power from the Developer sourced from the Preferred Project Portfolio.
    a. The PPA(s) must be offered at an aggregate rate across the 15 MW-AC portfolio (i.e., subscription pricing is not site specific, despite city meters being assigned to specific sites).

Miscellaneous PPA Requirements:

1. The PPA must allow for an anchor tenant, such as the City, to act as a flexible CSG subscriber.
    a. "Flexible CSG subscriber" means a retail customer of a utility who owns a variable subscription to a CSG that may equal up to the remainder of otherwise unsubscribed power for the CSG, and who has identified one or more premises served by the utility to which the CSG subscription shall be attributed.

2. The City must save on utility bills (meaning the CSG subscription price, including any Xcel Energy Renewable Energy Credit incentives, is below the bill credit paid for solar production).

Task 4: Construction Management and Reporting
Work with the City to complete construction at the preferred project portfolio sites.

Task 4: Deliverable

1. **Weekly Check-in Calls.**
    a. By phone; half hour in length.
    b. Action items and key notes circulated after call.
2. **Monthly Construction Progress Reports.**
    a. Provide updates on status for all active site construction projects.
    b. Provide construction invoices and/or other necessary information to ensure compliance with the grant requirements.
3. **System Data Reporting by Site.** Denver must have access to the following data elements, made available monthly:
    a. kWh subscribed (Total and by customer class, low-income separate)
    b. Number of customers subscribed (Total and by customer class, low-income separate)
    c. Revenue (Total and by customer class, low-income separate)
    d. Proof of low-income compliance
    e. Hourly system electricity generation curves

B. Proposed Timeline

Activity	2020 Q2			2020 Q3			2020 Q4			2021 Q1			2021 Q2			2021 Q3			2021 Q4			2022 Q1			2022 Q2		
	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6
Task 0: "Notice of Intent to Award"			o																								
Sign "Master Services Agreement"			x																								
Task 1: Solar Site Evaluation and Prioritization										o																	
1.1 – Site Evaluation				x																							
1.2 – Preferred Project Portfolio					x																						
Begin Xcel Energy interconnection studies (~120 days)						x																					
Denver to hold public meetings in the communities selected for solar deployments								x																			
1.3 – Finalize Siting and Pricing Terms										x																	
Task 2: Site Lease Agreements											o																
2.1 – Sign Site Leases (interconnection study dependent)											x																
Task 3: Power Purchase Agreements											o																
3.1 – Sign PPAs for confirmed sites											x																
Task 4: Construction Management and Reporting																											o
4.1 – Weekly Check-in Calls																											x
4.2 – Monthly Progress Reports																											x
4.3 – System Data Reporting by Site																						Ongoing for Lease Term					
General Check-in Items/Actions																											x
Engineering														x													
Final Design, Permitting, Zoning																			x								
Construction																					x						

Prepare electrical infrastructures																	x										
Denver installs EV chargers																					x						
Panel installation																							x				
Inspections and commissioning																								x			
System Operations																						Ongoing for PPA Term					
Denver Power Purchases																						Denver buys power					
Developer Manages Operations & Maintenance																						Developer Manages O&M					

SOLAR POWER SUBSCRIPTION AGREEMENT

THIS SOLAR POWER SUBSCRIPTION AGREEMENT (this "**Agreement**") is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("**City**," or "**the City**"), and **_______**, a **_________** with offices at **___________** ("**Power Provider**"), each a "**Party**" and collectively the "**Parties**."

WITNESSETH:

WHEREAS, the Parties intend that, pursuant to Colo. PUC No. 8 Electric Tariff ("**Tariff**") and the Producer Agreement, Power Provider's Solar Garden will generate Bill Credits to be applied to the City's monthly invoices from Utility for retail electric service for City Meters;

WHEREAS, the City desires to purchase from Power Provider the right to receive bill credits associated with **_____**% of the Energy Output generated by the Solar Garden ("**City's Allocated Percentage**") commencing on the Commercial Operation Date and continuing through the Term, as provided under the terms of this Agreement, for the City's facilities and for the benefit of the general public;

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

WHEREAS, Power Provider will construct, own, operate, and maintain a community solar garden with a total generating capacity rated at approximately 2000 kWp (the "**Solar Garden**") located at **__________**;

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

1. LINE OF AUTHORITY: The City's Executive Director of General Services, his designee or his successor in function (hereinafter referred to as the "Executive Director") authorizes and directs all work performed under this Agreement. Until otherwise notified by the Executive Director, the City's Energy Manager is designated as the authorized representative of the Executive Director through whom Sites access and Sites management shall be directed and coordinated. Administrative reports, memoranda, correspondence and other submittals required of the Power Provider shall be processed in accordance with the Executive Director's directions.

2. DEFINITIONS:

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

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

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

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

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

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

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

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

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

I. "**kWhac**" means kilowatt-hour alternating current.

J. "**kWp**" means kilowatt rated power.

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

L. "**Producer Agreement**" means that certain Solar*Rewards Community Producer Agreement between Utility and Power Provider dated as of **________** and attached hereto as **EXHIBIT G**.

M. "**PUC**" means the Public Utilities Commission of Colorado.

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

O. "**Tax Incentives**" means any and all new or existing federal, state or local tax credits, cash grants, production incentives or similar tax or cash benefits for which Power Provider or the Solar Garden is eligible or which either receives, or any depreciation, expenses, credits, benefits or other federal, state or local tax treatment for which Power Provider or the Solar Garden is eligible or that either receives.

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

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

3. INSTALLATION AND OPERATION OF SOLAR GARDEN:

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

B. Power Provider shall be solely responsible for all costs and the performance of all tasks required for installation of the Solar Garden, which shall include, without limitation, the following:

(i) obtain financing for installation and operation of the Solar Garden;

(ii) obtain all permits and enter into contracts and agreements required for installation of the Solar Garden;

(iii) obtain all necessary authority from Utility or regulatory entities for the operation of Solar Garden; and

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

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

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

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

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

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

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

(i) Power Provider is responsible for operating the Solar Garden so that it produces solar energy; for delivering and selling the solar energy and the associated Renewable Energy Credits to Utility; and for providing Utility with monthly information that identifies subscribers to the Solar Garden such as the City, and each subscriber's allocated percentage of the Solar Garden's Energy Output.

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

I. The Parties acknowledge that the Producer Agreement requires that Power Provider is responsible for answering all questions from City regarding its participation in the Solar Garden. Power Provider is solely responsible for resolving disputes with the Utility or City regarding the

accuracy of City's Allocated Percentage. Notwithstanding the foregoing, City acknowledges that the Utility is responsible for resolving disputes with City regarding the applicable rate used to determine the Bill Credit.

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

4. PURCHASE AND SALE OF POWER:

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

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

5. TERM: The term of the Agreement shall commence upon signature by all required signatories and shall expire twenty (20) years from the Commercial Operation Date (the "**Term**"), unless earlier terminated in accordance with the provisions of this Agreement.

6. PAYMENT OBLIGATIONS:

A. Any other provision of this Agreement notwithstanding, in no event shall the City's payment obligation for the Agreement be any amount in excess of the sum of __________ **($____.00)** over the Term, unless this Agreement is amended to increase such amount.

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

C. Power Provider shall deliver to the City monthly invoices, no later than thirty (30) days after the last day of the production month, stating the amount equal to the City's Allocated Percentage of the Solar Garden's Energy Output for the production month in kWhs. The invoice shall be in form satisfactory to the City. The City agrees that the Executive Director and the Chief Financial Officer of the Department of Finance may from time to time require changes to the format and content of the monthly invoice to be submitted by the City. The City is authorized to make payments to Power Provider's agent on Power Provider's behalf, so long as Power Provider

provides the City with evidence of Power Provider'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 Power Provider from time to time.

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

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

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

7. RECS AND TAX INCENTIVES:

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

B. The City acknowledges that Utility will acquire from Power Provider under the Producer Agreement all energy generated by the Solar Garden and all RECs associated with the Solar Garden. The City shall not make any statement contrary to Utility's ownership of the RECs, including but not limited to any public claim of renewable, green or environmental benefits associated with City's Allocated Percentage.

8. REPRESENTATIONS:

A. Each Party represents to the other Party that (a) such Party is duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; (b) the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized by all necessary corporate or other actions; (c) this Agreement is a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law); and (d) neither the execution and delivery of this Agreement by such Party nor compliance by such Party with any of the terms and provisions of this Agreement conflicts with, breaches or contravenes the provisions of such Party's organizational documents or any state statutes as applies to such Party. Power Provider further represents and warrants to the City that, to the best of its knowledge following due diligence inquiry, no governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to the City) is required in connection with the due authorization, execution and delivery of this Agreement by Power Provider or the performance by Power Provider of its obligations hereunder which Power Provider has reason to believe it will be unable to obtain in due course.

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

(i) The City is an incorporated municipality with total assets in excess of $5,000,000.00 as set forth in the City's 2017 Comprehensive Annual Financial Report. City is the sole party in interest agreeing to purchase City's Allocated Percentage and is acquiring City's Allocated Percentage for its own account and not with a view to the resale or other distribution of the City's Allocated Percentage, in whole or in part, and agrees that it will not transfer, sell or otherwise dispose of City's Allocated Percentage except as provided herein. City has been given the opportunity to ask questions of, and receive answers from, Power Provider concerning the terms and conditions of this Agreement and other matters pertaining to this Agreement. The City has been given the opportunity to obtain additional information necessary in order for City to evaluate the merits and risks of the purchase of City's Allocated Percentage.

(ii) City's Allocated Percentage, combined with any other distributed resources serving the City Meters, represents no more than 120% of City's average annual consumption at the City Meters over the last twenty-four (24) months; and

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

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

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

10. INSURANCE:

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

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

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

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

E. Subcontractors and Sub-Consultants. All subcontractors and sub-consultants (including independent power providers, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Power Provider. Power Provider shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and sub-consultants maintain the required coverages. Power Provider agrees to provide proof of insurance for all such subcontractors and sub-Power Providers upon request by the City.

F. Workers' Compensation/Employer's Liability Insurance: Contractor 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. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor'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 Contractor executes this Agreement.

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

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

I. Additional Provisions.

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

(a) That this Agreement is an insured contract under the policy;

(b) That defense costs are in excess of policy limits;

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

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

(ii) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

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

11. DEFENSE AND INDEMNIFICATION:

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

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

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

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

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

12. TAXES, CHARGES, AND PENALTIES:

A. The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's

Prompt Payment Ordinance DRMC § 20-107, *et seq*. The Power Provider shall promptly pay when due all taxes, bills, debts and obligations it incurs performing the services under the Agreement.

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

(i) The City's purchase of an Allocated Percentage as defined above will be treated as a service contract under Internal Revenue Code Section 7701(e).

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

(iii) Regardless of what any other provision of this Agreement may say to the contrary, the City will not be deemed to receive any significant financial benefit if the operating costs of the Solar Garden are less than the standard of performance and/or operation set forth in this Agreement, as the phrase "significant financial benefit if the operating costs of the Solar Garden are less than the standards of performance or operation" is used in Section 7701(e)(4)(A)(iii) of the Internal Revenue Code. This prohibition also applies to any party related to the City.

(iv) Regardless of what any other provision of this Agreement may say to the contrary, or what any other agreement between Power Provider and City may say to the contrary, the City will not have an option to purchase, and the City will not be required to purchase, any portion of the Solar Garden. This prohibition also applies to any party related to the City.

(v) Regardless of what any other provision of this Agreement may say to the contrary, the City will have no right to operate the Solar Garden, as that term is used in Internal Revenue Code Section 7701(e)(4)(A)(i). This prohibition also applies to any party related to the City.

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

13. CONFLICT OF INTEREST:

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

B. The Power Provider shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Power Provider represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Power Provider by placing the Power Provider's own interests, or the interests of any party with whom the Power Provider has a contractual arrangement, in conflict with those of the City. The City will determine the existence of a conflict of interest and provide Power Provider with written notice describing the conflict ("**Conflict Notice**"). Power Provider shall have fifteen (15) calendar days from receipt of the Conflict Notice to cure such conflict. If, after fifteen (15) calendar days from Power Provider's receipt of the Conflict Notice, Power Provider has not cured the conflict, the City may terminate the Agreement. If Power Provider disputes the existence of a conflict, Power Provider may seek to resolve the dispute pursuant to Section 14 of this Agreement.

14. DISPUTES: Except for invoice-related disputes, which shall be governed by Section 6.G of the Agreement, all other disputes between the City and Power Provider regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by DRMC § 56-106(b), *et seq*. For the purposes of that procedure, the City official rendering a final determination shall be the Executive Director.

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

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

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

18. DEFAULTS AND REMEDIES:

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

(i) Power Provider admits in writing that a Bankruptcy Event has occurred with respect to Power Provider;

(ii) Power Provider fails to pay the City any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from the City of such past due amount;

(iii) Power Provider breaches any material term of this Agreement and (A) Power Provider fails to cure the breach within thirty (30) days after receipt of written notice from the City, or (B) Power Provider fails to commence and pursue a cure within a reasonable time if a period greater than thirty (30) days is necessary to cure Power Provider Default; or

(iv) The Producer Agreement is terminated for any reason.

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

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

(i) The City admits in writing that a Bankruptcy Event occurs with respect to the City;

(ii) The City fails to pay Power Provider any undisputed amount due to Power Provider under the Agreement within thirty (30) days from receipt of notice from Power Provider of such past due amount; and

(iii) The City breaches any material term of this Agreement and (A) the City fails to cure the breach within thirty (30) days after receipt of written notice from Power Provider of such breach, or (B) the City fails to commence and pursue said cure within a reasonable time if a period greater than thirty (30) days is necessary to cure City Default.

D. Power Provider's Remedies. If a City Default described in Section 18.C has occurred and continues for a period of one hundred eighty (180) consecutive days, in addition to other remedies expressly provided herein, Power Provider may terminate this Agreement upon written notice to City, sell the City's Allocated Percentage to one or more persons other than the City, recover from City actual, reasonable and verifiable damages, and Power Provider may

exercise any other remedy it may have at law or equity or under this Agreement. In the event of such termination, Power Provider shall use reasonable efforts to mitigate its damages.

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

20. EXAMINATION OF RECORDS:

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

B. In addition to the foregoing, each Party hereto shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Each Party shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

21. TERMINATION:

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

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

C. The City may terminate this Agreement for convenience upon ninety (90) days' notice to Power Provider. If the City terminates the Agreement pursuant to this Section 21.C, Power Provider shall have the right to recover from the City (A) the sum of (x) an amount equal to the Estimated Remaining Payments from and after the date of termination to and including the earlier to occur of the date of Power Provider's execution of a new subscription agreement with a replacement subscriber (the "**New Contract**") or the twelve-month anniversary of the date of termination, plus (y) if the New Contract contains payment terms that are less favorable to Power Provider than the payment terms under this Agreement, an amount equal to the difference between the Estimated Remaining Payments and the estimated payments to be made under the New Contract for each month (or portion thereof) from and after the execution date of the New Contract

to the twentieth anniversary of the Commercial Operation Date, plus (z) lost renewable energy credit revenues, if any, under the Producer Agreement that would have been associated with the Allocated Percentage under this Agreement for the applicable period, minus (B) the amount of any revenues received by Power Provider from Utility under Section 2.6 of the Producer Agreement for the applicable period. If, for any applicable period, the difference between the sum determined under clause (A) above minus the amount determined under clause (B) above is less than zero, no payment shall be due from either Party. In the event of such termination by the City, Power Provider shall in good faith make all reasonable efforts to mitigate its damages.

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

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

F. Power Provider Termination Before Commercial Operation. If any of the following events or circumstances occur before the Commercial Operation Date, the Power Provider may terminate the Agreement immediately upon written notice, in which case neither Party will have any liability to the other except for any liabilities that accrued before termination:

(i) After the performance of due diligence using industry standard methods and techniques, there exist site conditions (including environmental conditions and ecological concerns such as presence of wildlife species) at the premises or construction requirements that could not have been reasonably known or discovered through due diligence as of the date of this Agreement and that could reasonably be expected to materially increase the cost of installation work or would adversely affect the electricity production from the Solar Garden as designed;

(ii) There has been a material adverse change in the (i) rights of Power Provider to construct the Solar Garden on the premises, or (ii) financial prospects or viability of the Solar Garden, whether due to market conditions, cost of equipment or any other reason;

(iii) After timely application to Utility and best efforts to secure interconnection services, Power Provider has not received evidence that interconnection services will be available at reasonable cost to Power Provider with respect to energy generated by the Solar Garden; or

(iv) After the performance of due diligence using industry standard methods and techniques, Power Provider has determined and did not previously know that there are easements, other liens or encumbrances, or other facts,

circumstances or developments that would materially impair or prevent, or have a material adverse effect on, the installation, operation, maintenance or removal of the Solar Garden.

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

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

22. ASSIGNMENT:

A. Assignment by Power Provider.

(i) Power Provider shall not assign this Agreement or any interest therein, without the prior written consent of the City, except as part of a Permitted Assignment as defined in Section 22.A(ii). Power Provider shall provide the City with such information concerning the proposed transferee (including any person or entity liable for the performance of the terms and conditions of this Agreement) as may be reasonably required to ascertain whether the conditions upon the City's approval to such proposed assignment have been met.

(ii) **Permitted Assignment**. Power Provider may, without the consent of the City, (1) transfer, pledge or assign all of its rights and obligations hereunder as security for any financing and/or sale-leaseback transaction or to an affiliated special purpose entity created for financing or tax credit purposes related to the Solar Garden, (2) transfer or assign this Agreement to any person or entity succeeding to all of the assets of Power Provider; provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof, (3) assign this Agreement to one or more affiliates; provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof, or (4) assign its rights under this Agreement to a successor entity in a merger or acquisition transaction; provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof. The City agrees to provide acknowledgments or certifications reasonably requested by any Lender in conjunction with any financing of the Solar Garden. The City shall not be obligated to pay invoices to the person or entity who has assumed Power Provider's obligations pursuant to this Section 22.A.(ii) until this Agreement has been amended in writing to acknowledge such assignment.

(iii) In the event of a Permitted Assignment by Power Provider of its interest in this Agreement to a person who has assumed, in writing, all of Power

Provider's obligations under this Agreement, Power Provider shall be released from any and all further obligations hereunder, and the City agrees to look solely to such successor-in-interest of the Power Provider for performance of such obligations.

B. Assignment by the City.

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

(ii) The City does not need Power Provider's consent to: (a) change the City Meters for the same amount of subscription as long as all the City Meters are owned by the City and meet the requirements of the community solar garden program; (b) assign this Agreement to another governmental entity in the event the State of Colorado reassigns responsibility to such other governmental entity for providing the services currently undertaken by the City at the facilities associated with the City Meters; or (c) assign this Agreement to another governmental entity with comparable investment credit rating and that otherwise meets the requirements of the community solar garden program. For such changes under this Section 22.B(ii), the City will notify Power Provider in writing and Power Provider will inform Utility as necessary of the change as soon as practicable.

(iii) The City's request for Power Provider's consent to any proposed change or assignment as contemplated in Section 22.B(i) must be in writing and provided to Power Provider at least thirty (30) days before the proposed effective date of such change or assignment, which request must include: (i) The City's name and mailing address; (ii) the current City Meter(s); (iii) the assignee's meters; (iv) the name and contact information for the individual or entity to whom the City is requesting to assign this Agreement (if applicable) and the consideration (if any) proposed to be provided to the City for such assignment; and (v) the proposed effective date of such proposed change or assignment. In the case of any assignment of this Agreement in whole or in part to another individual or entity; (a) such assignee's meters shall be located within Utility's service territory and within the same county as the Solar Garden or a contiguous county; (b) such assignee shall have a comparable credit rating to that of the City; (c) such assignee is eligible to receive Bill Credits from the Solar Garden pursuant to the Tariff and rules governing community solar; (d) such assignee shall make substantially the same representations and warranties as included in Section 8 of this Agreement at the time of the Transfer Date; (e) such assignee shall execute a new Solar*Rewards Community Subscriber Agency Agreement, Consent to Disclose Utility Data and any other documentation reasonably necessary to give effect to the assignment of this Agreement substantially in the same form as this Agreement; and (f) the value of any consideration to be provided to the City for assignment of this

Agreement may not exceed the aggregate amount of Bill Credits that have accrued to the City but have not yet been applied to the City's monthly invoice(s) from Utility.

(iv) Upon any assignment of this Agreement pursuant to this Section 22.B, the City will surrender all right, title and interest in and to this Agreement. No assignment will extend the Term of this Agreement.

(v) **Processing Changes**. Assignments of this Agreement or any interest therein by the City may take up to ninety (90) days to complete, depending on the accuracy of the information Power Provider receives and the timely completion and return by the City of the documents Power Provider requires.

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

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

24. INDEPENDENT CONTRACTOR: Power Provider shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon the City. Nothing in this Agreement shall be construed to mean or imply that Power Provider is a partner, joint venturer, agent or representative of the City. Neither the City nor Power Provider shall represent to others that one Party is a partner, joint venturer, agent or representative of, or otherwise associated with, the other Party. The Power Provider lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the DRMC.

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

City:	Executive Director of General Services c/o Utilities Division 201 West Colfax, Dept. 1106 Denver, Colorado 80202
With a copy to:	Denver City Attorney's Office Municipal Operations Section 201 West Colfax, Dept. 1207 Denver, Colorado 80202
Power Provider:	[______________]

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

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

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

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

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

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

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

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

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

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

35. **LEGAL EFFECT OF CONTRACT:**

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

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

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

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

38. **ACCESS TO FEDERALTAXPAYER INFORMATION:**

A. **Performance:** In performance of this contract, the Power Provider agrees to comply with and assume responsibility for compliance by his, her or its employees with the following requirements:

(i) All work will be done under the supervision of the Power Provider or the Power Provider's employees.

(ii) Any tax return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the Power Provider will be prohibited.

(iii) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

(iv) The Power Provider certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Power Provider at the time the work is completed. If immediate purging of all data storage components is not possible, the Power Provider certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

(v) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the Power Provider will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

(vi) All computer systems processing, storing, or transmitting federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.

(vii) No work involving federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.

(viii) The Power Provider will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

(ix) The agency will have the right to void the contract if the Power Provider fails to provide the safeguards described above.

B. <u>Criminal/Civil Sanctions</u>:

(i) Each officer or employee or any person to whom returns or return information is or may be disclosed will be notified in writing. Such person

shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than $1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(ii) Each officer or employee or any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as $1,000 or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee (United States for federal employees) in an amount equal to the sum of the greater of $1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

(iii) Additionally, it is incumbent upon the Power Provider to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established under it, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

C. Inspection: The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the Power Provider for inspection of the facilities and operations provided for the performance of any work under this Agreement. On the basis of such inspection, specific measures may be required in cases where the Power Provider is found to be noncompliant with contract safeguards.

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

40. LENDER PROVISIONS:

A. Lender Collateral Assignment. The City hereby:

(i) Acknowledges and consents to the sale, assignment, conveyance, pledge or collateral assignment by Power Provider to any Lender, of Power Provider's right, title and interest in, to and under this Agreement, as consented to under Section 22 of this Agreement;

(ii) Acknowledges that any Lender as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Power Provider's interests in this Agreement; and

(iii) Acknowledges that it has been advised that Power Provider may grant a security interest in the Solar Garden to a Lender and that the Lender may rely upon the characterization of the Solar Garden as personal property, as agreed in this Agreement, in accepting such security interest as collateral for its financing of the Solar Garden.

B. Lender Cure Rights upon System Owner Default. Upon any Event of Power Provider Default, a copy of any notice delivered under Section 18 shall be delivered concurrently by the City to any Lender at the addresses provided in writing by Power Provider to the City. Following receipt by any Lender of any notice that Power Provider is in default in its obligations under this Agreement, such Lender shall have the right but not the obligation to cure any such default, and the City agrees to accept any cure tendered by the Lender on behalf of Provider in accordance with the following: (a) a Lender shall have the same period after receipt of a notice of default to remedy a Power Provider Default, or cause the same to be remedied, as is given to Power Provider after Power Provider's receipt of a notice of default hereunder; provided, however, that any such cure periods shall be extended for the time reasonably required by the Lender to complete such cure, including the time required for the Lender to obtain possession of the Solar Garden (including possession by a receiver), institute foreclosure proceedings or otherwise perfect its right to effect such cure, but in no event longer than one hundred eighty (180) days; and (b) the Lender shall not be required to cure any Power Provider Default that is not reasonably susceptible of being cured or performed by Lender. The Lender shall have the absolute right to substitute itself or an affiliate for Power Provider and perform the duties of Power Provider hereunder for purposes of curing such Power Provider Default. The City expressly consents to such substitution, and authorizes the Lender or its affiliates (or either of their employees, agents, representatives or

contractors) to enter upon the premises to complete such performance with all of the rights and privileges of Power Provider, but subject to the terms and conditions of this Agreement. The City shall be protected and shall incur no liability in acting or proceeding in good faith upon any such foregoing direction by Lender which the City shall in good faith believe to be genuine. The City shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such foregoing direction from Lender, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements. Except as otherwise set forth in this Section 40, the Parties' respective obligations will remain in effect during any cure period. If the Lender (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Power Provider assets and shall, within the time periods described in this Section 40, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

List of Exhibits:
EXHIBIT A: SRC Subscriber Agency Agreement & Utility Data Consent Form
EXHIBIT B: Description of Solar Garden System and Location
EXHIBIT C: Pricing Schedule
EXHIBIT D: Estimated Annual Energy
EXHIBIT E: City Meters
EXHIBIT F: Insurance ACORD Certificate
EXHIBIT G: Producer Agreement

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LEASE AGREEMENT
SUMMARY PAGE

(________________)

This Summary Page, consisting of two pages, is attached to and made a part of that certain Agreement dated ______________________, _____ between the City and County of Denver and the Lessee listed below.

LESSEE

Name ____

Address ____

____

Attention ____

PREMISES

Location ______________________________

Address ______________________________

Square Footage ______________________________

PERMITTED USES ____

____

____

____

HOURS OF OPERATION 365 days a year, weather permitting

TERM

Commencement Date ______________________________
Expiration Date ______________________________

____
Lessee

CONSIDERATION (Initial)

Monthly Payment	______________________
Percentage Compensation Fee	%

PERFORMANCE BOND (six months of Monthly Guarantees)	$

INSURANCE POLICY AMOUNTS

A. Comprehensive General Liability	$1,000,000.00/$2,000,000.00
B. Automobile/Delivery Vehicle Liability	$1,000,000.00
C. Worker's Compensation	Statutory Requirements

DESCRIPTION OF EXHIBITS AND ADDENDA

Exhibit A	Legal Description of Property
Exhibit B	Depiction of Premises
Exhibit C	Construction Terms
Exhibit D	Bond and Special Counsel Consent
Exhibit E	Purchase Option Summary Schedule
Exhibit F	Lessee's Proposal
Exhibit G	Lessee's Certificate of Insurance

____
Lessee

CONSTRUCTION SUMMARY PAGE

(__________________________________)

This Summary Page, consisting of one page, is attached to and made a part of that certain Agreement dated ______________________, ______ between the City and County of Denver and the Lessee listed below.

LESSEE

Name ____

Address ____

____

Attention ____

DESIGN AND CONSTRUCTION DEADLINE (calendar days after Commencement Date of Agreement) ______________________________

CONSTRUCTION PERFORMANCE AND PAYMENT BOND AMOUNTS (100% of construction contract price)

CONSTRUCTION INSURANCE POLICY AMOUNTS

A.	Builders Risk	100% of construction contract price
B.	Minimum Commercial General Liability Combined Single Limit	$1,000,000
	General Aggregate	$2,000,000
C.	Business Auto Liability Combined Single Limit	$1,000,000
D.	Worker's Compensation	Statutory Requirements

____

Lessee

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease" or "Agreement"), is by and between the **CITY AND COUNTY OF DENVER,** a municipal corporation of the State of Colorado ("City" or "the City"), and ___________ whose address _______________, a ___________ authorized to do business in the State of Colorado ("Lessee" or "the Lessee").

WHEREAS, the City, owns certain real property and improvements located at ____________________________ as further described on **Exhibit A**, attached hereto and made a part hereof (the "Property");

[**WHEREAS,** shown on Exhibit __, the City has entered into the _______ Bonds Series _______, and Series _______________ bond transactions ("Bonds") and Certificates of Participation ________________ ("COPs") in respect of the Premises;

WHEREAS, pursuant to the respective Bond and COP Ordinances, Ordinance No.__________, Series of ________, Ordinance No._____, Series of ___, and Ordinance No.__, Series of ______ and the tax exempt status of the Bonds and COPs, the Premises' use is subject to regulation under the Internal Revenue Code. The parties agree therefore that this Lease Agreement must be and has been approved by Bond Counsel for the Bond and by Special Counsel for the COPs;]

WHEREAS, upon due consideration the City has determined that in the exercise of its lawful functions, it is desirable and appropriate that an electricity grid-connected photovoltaic, solar power plants with a total generating capacity rated at approximately ____ kWp (the "Generating Facility") be developed, constructed, equipped, owned, and operated by the Lessee on the Property and that such use is compatible and appropriate within the uses allowed for the Property, in order to put the same to full, productive use and for the benefit of the general public; and

WHEREAS, the City deems it appropriate and necessary in the public interest to have the Generating Facility operated on its behalf by others, and to have the same operated by Lessee, but under and subject to the continuing jurisdiction, supervision and control of the Department of General Services of the City, under this Agreement, all as herein provided; and

WHEREAS, Lessee hereby binds itself subject to the terms and provision of this Agreement to pay the City the rentals and payments required herein and to otherwise perform all the terms and conditions of this Agreement.

NOW THEREFORE, the City, for the term herein specified, and for and in consideration of the rentals herein stated, and of the terms and conditions herein stated on the part of the Lessee to be kept, observed and performed, has demised and leased, and does by these presents demise and lease to Lessee, and the Lessee has agreed to take and does hereby take from the City, the Premises, as hereinafter improved, all upon and subject to the following express terms, provisions, and conditions:

SECTION 1
GENERAL

1.01 CONSIDERATION

The City enters into this Agreement for and in consideration of the payment of consideration by Lessee as herein provided, the construction of all improvements by Lessee as herein provided, the observance by Lessee of the covenants and agreements herein.

1.02 INCORPORATION OF ATTACHED SUMMARY PAGES, EXHIBITS AND ADDENDA

The Summary Pages attached to this Agreement and the Exhibits and Addenda attached to this Agreement as described on the Summary Pages are hereby incorporated in this Agreement.

[1.03 CONDITIONS PRECEDENT TO EFFECTIVENESS OF LEASE

The Parties agree that approval of Bond Counsel of the Lease for the Generating Facilities shall be a condition precedent to the effectiveness of this Lease.]

SECTION 2
DEFINITIONS

2.01 AUDITOR

"Auditor" shall mean the City's Auditor and his/her authorized representative.

[2.02 BOND COUNSEL

"Bond counsel" shall mean the City's Bond Counsel, [to be provided].]

2.03 COMMENCEMENT DATE

The "Commencement Date" shall mean the date of execution of this Agreement by the City.

2.04 DEFAULT

The "Default" shall have the meaning given in Section 10 of this Agreement.

2.05 DESIGN STANDARDS

"Design Standards" shall mean the design standards and criteria in the ________________, and as hereafter amended.

2.06 DEVELOPMENT GUIDELINES

"Development Guidelines" shall mean the criteria established at ______for tenants and Lessees for design, construction, installation, signage, and related matters, and as hereafter amended.

2.07 DIRECTOR

"Director" shall mean the Director of Real Estate for the City. Director or his/her designee shall act as the site manager of the Property.

2.08 EXPIRATION DATE

"Expiration Date" shall have the meaning given in Section 4.

2.09 GENERATING FACILITY

"Generating Facility" shall have the meaning given in the Recitals.

2.10 LESSEE'S PROPOSAL

"Lessee's Proposal" shall mean the proposal attached hereto as **Exhibit F** and presented to the City on or about ____, 20___, as "________________" to be designed by ______________, and accepted by City, and consisting of Lessee's plans for the design, construction and its plan of operation.

2.11 MANAGER

"Manager" shall mean the City's Manager of General Services.

2.12 MANAGER'S AUTHORIZED REPRESENTATIVE

Whenever reference is made herein to "Manager or his/her authorized representative," or words of similar import are used, the City's ______________ shall be such authorized representative of the Manager, unless notice otherwise is given to the Lessee by the Manager.

2.13 PAST DUE INTEREST RATE

"Past Due Interest Rate" shall mean interest accruing at one percent (1%) per month commencing on the fifth calendar day after the date such amount is due and owing until paid to City.

2.14 PREMISES

"Premises" shall mean the Premises as generally depicted as the cross-hatched area on the Premises Plan attached hereto as **Exhibit B**, located within the Property and containing the number of square feet, more or less, as set forth on the Summary Page. "Premises" shall include the plural where applicable. The City and Lessee acknowledge and agree that the dimensions of the Premises as set forth in **Exhibit B** are approximate and that the precise dimensions and footage shall be determined by the Manager and a revision to the Summary Page and **Exhibit B** will be made, if necessary,

depicting the dimensions and footage of the Premises as actually constructed, each of these actions to be taken without the requirements of a formal amendment to this Agreement.

2.15 PROPERTY

"Property" shall mean the City owned real property located in Denver, Colorado, as further described in **Exhibit A** attached hereto. The Premises are located on or within the Property.

2.16 PURCHASE OPTION

"Purchase Option" shall mean the City's option to purchase the Generating Facility which may be exercised as set forth in Section 6.05.

2.17 PURCHASE OPTION PRICE

"Purchase Option Price" shall mean the price to purchase the Generating Facility as set forth in the Purchase Option Summary.

2.19 SOLAR POWER SUBSCRIPTION AGREEMENT

"Solar Power Subscription Agreement' shall mean that certain Solar Power Subscription Agreement of even date herewith, between Lessee as Lessee, and the City.

2.18 TERM

"Term" shall have the meaning given in Section 4.01.

SECTION 3
GRANT OF LESSEE RIGHTS

3.01 RIGHTS GRANTED

The City grants to Lessee the non-exclusive right to occupy, improve and use the Premises consistent with and subject to all of the terms and provisions of this Agreement.

3.02 USE OF PREMISES

A. Lessee may use the Premises only to construct upon, occupy, own, operate, and use the Generating Facility on the Premises consistent with and subject to all of the terms and provisions of this Agreement and provide related services as set forth on the Summary Page and for no other purposes, unless otherwise authorized in writing by the Manager. It is understood that the use of Premises is restricted by the [Bond and COP Ordinances], existing zoning code designation of the City, and existing or future [City cell tower agreements], and by all applicable rules, regulations, statutes or ordinances promulgated by any federal, state or municipal agency having jurisdiction over the Premises. [The City has provided to the Lessee a copy of all existing cell tower agreements which allow placement of cell towers on the Property.] Lessee represents and warrants that it has reviewed the applicable zoning and land use restrictions [pursuant to the Bond and COP

Ordinances.] As of the Commencement Date, Lessee represents and warrants that it shall comply with applicable zoning, [cell tower agreements], and land use restrictions.

B. Lessee understands and agrees that due to the extended length of the Term of this Agreement, the City may determine that it has become necessary for the City to replace the roof or perform other construction related maintenance of the Property, including the Premises. In the event that the City determines to replace the roof or conduct other maintenance impacting the Premises, the City shall provide at least one hundred twenty (120) days' notice to the Lessee. The Lessee shall cooperate with the City to lessen the impact on the Lessee, including temporary relocation of the Generating Facility to another location within the Property as may be directed by the City. The City shall permit the Lessee to resume occupation of the Premises in a reasonably timely manner upon completion of the roof replacement.

3.03 RIGHTS NON-EXCLUSIVE

The City reserves the right to grant to other lessees the right to operate other photovoltaic, solar power plants in locations within the City other than the Premises, and Lessee understands and agrees that its right to operate a Generating Facility within the City is not exclusive. Further, City reserves to itself, its successors and assigns, the right to grant easements and rights of way after the Commencement Date, over and under the Premises for utilities, cell towers, and other uses, so long as such easements and rights of way do not substantially interfere with the Generating Facility's insolation and access to sunlight, as such access exists as of the Commencement Date of this Lease. Lessee acknowledges and agrees that the Premises will be subject to and burdened by such easements and rights of way. If the area of the Premises is reduced at the City's direction from the Agreement the rent thereafter shall be reduced in the same proportion as the area deleted bears to the area originally subject to the Agreement

3.04 NO INTERFERENCE

The City represents to Lessee that the City has legal title to the Property, including the Premises, and that there are no circumstances known to the City and no commitments to third parties that may damage, impair, or otherwise adversely affect or interfere with the Generating Facility or its function by blocking the Generating Facility's insolation and access to sunlight; furthermore, the City covenants that, except in the exercise of its police and regulatory powers, City shall not cause any such interference with the Generating Facility's insolation and access to sunlight.

3.05 MEANS OF ACCESS

A. During and after construction of the Generating Facility, all persons accessing the Premises shall be properly trained and shall produce to the Director a certificate from an Occupational Safety and Health Administration approved class on the process of "Lock-Out and Tag-Out" on file with the Director, together with a list of technicians and personnel requiring access to the Premises. During construction of the Generating Facility, all persons requiring access must have certificates of insurance posted on site or provided to the Director.

B. During and after construction of the Generating Facility, Lessee, its agents, invitees, guests, employees and suppliers have a non-exclusive right of roof top access and ingress to and egress from the Premises, which shall be coordinated with the Director. The City may, at the City's expense, at any time close, relocate, reconstruct or modify such means of access, provided that a reasonably convenient and adequate means of ingress and egress is available for the same purposes.

Lessee shall give prior notice to the Director of the need to access the Property and shall coordinate all activity at the Premises with the Director. Lessee's access shall be subject to such reasonable rules as the City may adopt, including but not limited to the Director or his designee accompanying the Lessee's representative during such access.

3.06 RIGHT OF ENTRY

The City retains the full right of entry in and to the Premises with reasonable prior notice for any purpose necessary, incidental to, or in connection with its obligations hereunder, or in the exercise of its governmental functions, or for the purpose of making any inspection. In the event of an emergency the City may enter the Premises without giving prior notice, but shall inform the Lessee within a reasonable time after the fact.

SECTION 4
TERM AND TERMINATION

4.01 TERM

"Term" shall mean the period commencing at noon on the Commencement Date and expiring at noon on the date that is twenty (20) years after the Commencement Date ("Expiration Date") unless extended or earlier terminated pursuant to the terms and conditions of this Agreement.

4.02 TERMINATION OF LEASE BY CITY

A. In the event the City determines it is in the best interest of the City to sell the Property, the City may condition the sale upon acceptance by the buyer of an assignment of this Agreement and the corresponding Solar Power Subscription Agreement.

B. In the event the Manager determines that the City may not use the Premises for Generating Facility purposes during the term of this Lease the City has the right to terminate this Agreement upon six (6) months prior written notice to the Lessee.

4.03 TERMINATION OF LEASE BY LESSEE

Lessee shall have the right to terminate this Agreement without further obligation or liability in accordance with Section 6.01(B) (Facilities to be Constructed) or Section 11.01 (Damage to or Destruction of Premises).

4.04 TERMINATION FOR CAUSE

Either the City or Lessee 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, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with such party's business. Termination for the reasons stated in this Section 4.04 is effective immediately upon receipt of notice.

4.05 SURRENDER OF PREMISES

Upon the Expiration Date or earlier termination of this Agreement or on the date specified in any demand for possession by City after any Default by Lessee, Lessee covenants and agrees to surrender possession of the Premises and, if all or any portion of the Generating Facility is removed as requested by City, Lessee shall, at Lessee's expense, restore the Premises to its original condition existing prior to the installation of such improvements or applicable portions thereof, and upon failure to do so, City may cause such removal and restoration to be done at Lessee's expense. Lessee shall remove its equipment, unless the City has elected to purchase the Generating Facility and rights of associated S-RECs in accordance with paragraph 6.05 of this Agreement. If Lessee fails to remove the Generating Facility within one hundred twenty (120) days from the Expiration Date or earlier termination of this Agreement, City may, at its option, keep and retain any such Generating Facility or dispose of the same and retain any proceeds therefrom, and City shall be entitled to recover from Lessee any costs of City in removing the same and in restoring the Premises subject to ordinary wear and tear, in excess of the actual proceeds, if any, received by City from disposition thereof.

4.06 HOLDING OVER

If Lessee holds over after Expiration Date of the Term or any extension thereof, thereafter Lessee's occupancy shall be deemed a month-to-month tenancy at an annual rental equal to 150% of the annual compensation provided in Section 5 herein. Lessee shall be subject to all other terms and conditions of this Agreement not specifically modified above. Nothing herein shall be construed to give Lessee the right to hold over, and City may exercise any remedy at law or in equity to recover possession of the Premises, as well as any damages incurred by City.

SECTION 5
CONSIDERATION

5.01 CONSIDERATION

A. Lessee covenants and agrees, without offset, deduction or abatement, to pay City as consideration for the rights and privileges granted by City, a rental of _______ Dollars and 00/100 ($___.00) per year payable in advance to the Manager of Finance, City and County of Denver. Each annual payment shall be delivered to the Manager at 201 West Colfax, Dept. 1110, Denver, Colorado 80202, or to such other address as the City may designate. Payments

shall be due on _________________ 1, of each year beginning with ____1, 20__ and continuing through ___1, 20___.

B. [Lessee acknowledges that the City is providing tenant finish on behalf of the Lessee in connection with a roofing contract. The tenant finish will permit installation of the mounting system for the Generating Facility. The City shall invoice the Lessee for the tenant finish and the Lessee shall remit payment on the invoice to the Manager of Finance within thirty (30) days of the date of the invoice.]

C. Lessee shall grant to the City an option to purchase the Generating Facility and the solar renewable energy credits as set forth in Section 6 of this Agreement.

D. The obligation to pay such consideration shall commence upon the Commencement Date set forth herein and continue through the Term hereof.

5.02 INTEREST ON PAST DUE AMOUNTS

Any payments not made to City when due shall accrue interest at the Past Due Interest Rate, as herein defined.

5.03 PLACE AND MANNER OF PAYMENTS

All sums payable to City hereunder shall be made payable to "Manager of Finance" without notice at the following:

Manager of Finance
201 West Colfax Dept 1010
Denver, Colorado 80202

or at such other place as the Manager or his authorized representative may hereafter designate by notice in writing to Lessee. All sums shall be made in legal tender of the United States. Any check given to the City shall be received by it subject to collection, and Lessee agrees to pay any charges, fees or costs incurred by the City for such collection, including reasonable attorneys' fees.

5.04 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 Lessee's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Lessee 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.

SECTION 6
CONSTRUCTION OF GENERATING FACILITY

6.01 FACILITY TO BE CONSTRUCTED

A. Lessee, at its cost shall prepare plans and specifications for the Generating Facility to be constructed hereunder. The plans and specifications shall be subject to the Manager's [and the Director's] approval, which approval shall not be unreasonably withheld. Such plans shall be generally in accordance with Lessee's Proposal, as attached as **Exhibit E**. Any changes to Lessee's Proposal must be approved by the Manager [and the Director] in their respective sole discretion. Lessee agrees to complete construction of the Generating Facility no later than 150 days after the Commencement Date of this Agreement.

B. [The Manager in his/her sole discretion may extend the construction deadlines set forth above without the need for City Council approval, however, in any event, the Manager may not extend the date for completion of construction beyond _____________, 20__.]

C. The Manager [and the Director] shall approve the final design of the Generating Facility and shall jointly approve any changes in the concept or design of the Generating Facility.

6.03 GENERATING FACILITY

The Generating Facility shall contain a maximum of __________ square feet at all ___ locations, and a capacity of approximately ________kWp. The Manager [and the Director] may approve changes in the location of the Generating Facility, as long as the size of the site does not increase the area of the Premises.

6.04 TITLE TO IMPROVEMENTS

Lessee agrees that all improvements installed by the City to the Premises, including approved changes and renovations, which are affixed to the real property, are the property of the City upon their completion and acceptance by City. Lessee shall sign any documents reasonably requested by City evidencing the ownership in the City. The City agrees that the Generating Facility is the property of the Lessee. The City shall sign any documents reasonably requested by Lessee evidencing the ownership of the Generating Facility in the Lessee. The City expressly denies any ownership, interest, operation, responsibility, or liability for the installation, operation or maintenance of the Generating Facility at any time during the Term, unless and until the City has exercised its option for purchase pursuant to Section 6.05 below.

6.05 OPTION FOR PURCHASE OF GENERATING FACILITY

At any time after the twentieth (20th) anniversary of the Commercial Operation Date (as defined in the Solar Power Subscription Agreement) and so long as the City is not in Default under this Agreement, the City may elect, in its sole discretion and at its sole option, to purchase the Generating Facility from the Lessee, including all rights and privileges held by the Lessee. If the City elects to purchase the Generating Facility prior to the Expiration Date, the City shall pay to the Lessee the greater of the then Fair Market Value or Buy-Out Price set forth in the Purchase Option Summary Schedule attached to this Agreement as **Exhibit E**. If the City elects to exercise the purchase option at the Expiration Date, the purchase price shall be the then Fair Market Value. Not less than ninety (90) days prior to the projected date for exercise of the purchase option, the City shall provide written notice to Lessee of the City's desire to determine the Fair Market Value of the Generating Facility. The City shall not elect to exercise its Purchase Option until after a Fair Market Value has been determined. Upon the exercise of the foregoing purchase option plus receipt of the Fair Market Value or Buy-Out Price, as applicable, and all other amounts then owing by the City to Lessee, the parties will execute all documents necessary to cause title to the Generating Facility to pass to the City as-is, where-is; provided, however, that Lessee shall remove any encumbrances placed on the Generating Facility by the Lessee. The "Fair Market Value" of the Generating Facility shall be the value determined by the mutual agreement of the City and Lessee within thirty (30) days of the City's notice of desire to determine the Fair Market Value pursuant to this Section 6.05. If the City and Lessee cannot mutually agree to a Fair Market Value, then the parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the parties. The greater of the Buy-Out Price or the Fair Market Value valuation made by the appraiser shall be the price at which the City may, in its sole discretion, determine to exercise its Purchase Option. The costs of the appraisal shall, subject to the City's appropriation, be borne by the parties equally. To the extent transferable, the remaining period, if any, on all warranties for the Generating Facility shall be transferred from Lessee to the City at no cost to the City. If the parties are unable to agree on the selection of an appraiser, such appraiser shall be selected by the two (2) appraisal firms proposed by each party. Upon any such purchase of the Generating Facility by the City, Lessee shall convey all its title, ownership rights, and any other interests Lessee holds in the Generating Facility and the renewable energy certificates and other revenues related to the Generating Facility. Such purchase and assignment shall be conditioned upon the consent of Public Service Co. of Colorado to the transfer and assignment of the agreements between the Lessee and Public Service Co. of Colorado.

6.06 DESIGN, DEVELOPMENT AND CONSTRUCTION OF IMPROVEMENTS, RESTRICTION ON CHANGES

A. The Generating Facility must consider historical values in its design and operation.

B. Site development shall conform to all applicable local, state and federal requirements. This includes, but is not limited to, State and United States Environmental Protection Agency ("EPA")

water and air quality requirements, storm drainage management plans by the Urban Drainage and Flood Control District (UDFCD) and related agencies to the Property site.

C. Lessee shall provide a notice of construction start date at least fifteen (15) days prior to beginning construction and shall cooperate with the City and its planners, designers, architects, and engineers in the construction and installation of the Generating Facility and site improvements on the Property and shall comply with the approved plans and specifications of applicable laws, including the City's Building Code, and to the extent applicable the Development Guidelines.

Coordination with the Director and the Property staff will be the sole responsibility of the Lessee for obtaining all site development and building permits.

D. Lessee shall be responsible for all utilities needed during construction.

E. All construction work, materials, and installations involved in or incidental to the construction on the Property shall be subject at all times to inspection and approval by the City. The City shall at all times have the right of access to the Property, including the Premises to monitor and inspect the construction of the Generating Facility to assure that the Generating Facility is constructed and installed in compliance with the approved plans and specifications.

F. The City shall have the right to halt construction or deny access to the Property, including the Premises, at any time if such construction is at material variance from the approved plans and specifications until such material variance is corrected, or if such construction poses an immediate safety hazard at the Property, including the Premises, until such safety hazard is eliminated. The City shall provide notice of any access to the Premises and shall cooperate and use its best efforts to alleviate and resolve any such material variance or impediment to the safe operation of all of the Property so as to permit continuation of construction as expeditiously as possible.

G. Thereafter, Lessee agrees not to alter, add to, remove, or demolish any of the improvements on the Premises without the prior written approval of the Manager [and the Director], which consent shall not be unreasonably withheld. All such alterations or changes shall be made in accordance with the applicable Development Guidelines.

6.07 AS-BUILT DRAWINGS

Not later than sixty (60) days after completion of all work for the Generating Facility, Lessee shall provide the City complete sets of as-built drawings prepared. If Lessee fails to provide the as-built drawings after written notice from the City, the City may elect to have the drawings completed and charge Lessee for the costs associated therewith. Lessee agrees that, upon the request of the City, Lessee will inspect the Premises jointly with the City to verify the as-built drawings. All material improvements made by Lessee shall be subject to inspection by the City and approval by Manager within fourteen (14) calendar days of request for approval, and shall be removed and replaced at Lessee's sole cost immediately if disapproved.

6.08 LETTER OF CREDIT, CONSTRUCTION BONDS

Prior to the commencement of construction, Lessee shall deliver to the Manager a payment and performance bond, or alternate form of surety, letter of credit or alternate form of assurance, in a sum not less than One Hundred Percent (100%) of construction contract price payable to Lessee's contractor. Said bond shall guarantee prompt and faithful payment by the Lessee directly to Lessee's contractors and by Lessee'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

6.09 LIMITATION ON LIABILITY

Lessee agrees that no liability shall attach to the City for any damages or losses incurred or claimed by Lessee or any other person or party on account of the construction or installation of the Generating Facility or other improvements to or upon the Premises made by Lessee. Lessee agrees that no liability shall attach to the City for any interference or delay caused by construction in adjacent areas or the Property 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 Lessee as a result of any City-caused interference or delay.

SECTION 7
OPERATION AND USE OF PREMISES

7.01 OPERATIONS

Lessee agrees to conduct its business to accommodate the public using the Property and to operate the Generating Facility in the following manner:

A. Lessee shall operate the Generating Facility in accordance with prudent industry standards.

B. Lessee shall at all times retain an experienced manager of high quality to manage the Generating Facility who is fully authorized to represent and act for it in the operation of the Generating Facility and to accept service of all notices provided for herein. At times when this manager is not present at the Generating Facility, Lessee shall assign, or cause to be assigned, a qualified subordinate to be in charge of the Premises, services and Generating Facility and to be available at the Premises to act for such manager.

C. Lessee shall provide the City with prior written notice of Lessee's personnel that will be at the Property to perform any operation or maintenance on the Generating Facility, and such Lessee personnel shall be clearly identified as such.

D. Lessee shall comply with all applicable federal, state and local laws and regulations, including without limitation, those governing operation of energy utilities. Lessee shall allow duly authorized

representatives of governmental entities access to the Premises for inspection purposes. Lessee agrees to obtain, at its own expense, and maintain at all times, all licenses and certificates necessary for the operation of the Generating Facility and to comply with all applicable health, safety and sanitary laws, regulations and inspections concerning same.

E. Lessee shall develop detailed written operating and security procedures and City shall have twenty-one (21) days to review such procedures.

F. Lessee shall comply with all IRS regulations.

G. The Manager or his/her authorized representative shall have the right to make reasonable objections to the character of the service rendered, energy produced, and the appearance and condition of the Premises. Lessee agrees to promptly discontinue or remedy any objectionable practice or condition within five (5) days after written notice by the Manager or his/her authorized representative.

7.02 HOURS OF OPERATION

Lessee agrees to keep the Generating Facility open year-round during daylight hours, extenuating circumstances such as weather excepted.

7.03 COMPLIANCE WITH ALL LAWS

Lessee agrees not to use or permit the Premises to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the ordinances or Charter of the City and County of Denver, or not authorized hereunder, and it further agrees that it will use the Premises in accordance with all applicable federal, state and local laws and all general rules and regulations adopted by the City or the Manager for the management, operation and control of the Property, either promulgated by the City on its own initiative or in compliance with regulations or other authorized federal agency. Lessee further agrees to submit any report or reports or information which the City is required by law or regulation to obtain from Lessee or which the Manager may request relating to Lessee's operations. Without limiting the foregoing, Lessee shall comply at all times with the Americans with Disabilities Act, 42 USC 12101 et seq., and all applicable regulations adopted pursuant thereto, in the physical conditions in the Premises and in Lessee's operations.

7.04 COMPLIANCE WITH ENVIRONMENTAL LAWS

A. Lessee, in conducting any activity on the Premises, shall comply with all applicable local, state or federal environmental rules, regulations, statutes, laws or orders (collectively "Environmental Laws"). For purposes of this Agreement, "Environmental Laws" shall mean and include without limitation (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended (42 U.S.C. § 6901, et seq.), (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as now or hereafter amended (42 U.S.C. § 9601, et seq.), (iii) the Clean Water Act, as now or hereafter amended (33 U.S.C. § 1251, et seq.), (iv) the Toxic Substances Control Act of 1976, as now or hereafter amended (15 U.S.C. § 2601, et seq.), (v) the Clean Air Act, as now or hereafter

amended (42 U.S.C. § 7401, et seq.), (vi) the Safe Drinking Water Act, (42 U.S.C. § 300f, et seq.), (vii) the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S. § 1802, et seq.), (viii) all regulations promulgated under any of the foregoing, (ix) any local or state law, statute, regulation or ordinance analogous to any of the foregoing, including, but not limited to, Colorado Revised Statutes, Title 25, Articles 15 and 18, as now or hereafter amended, and (x) any other federal, state, or local law (including any common law), statute, regulation, or ordinance regulating, prohibiting, or otherwise restricting the pollution, protection of the environment, or the use, storage, discharge, or disposal of Hazardous Materials. "Hazardous Materials" means any toxic substances or hazardous wastes, substance, product matter, material, waste, solid, liquid, gas, or pollutant, the generation, storage, disposal, handling, recycling, release, treatment, discharge, or emission of which is regulated, prohibited, or limited under any Environmental Law, and shall also include, without limitation: (i) gasoline, diesel, diesel fuel, fuel oil, motor oil, waste oil, and any other petroleum products or hydrocarbons, including any additives or other by-products associated therewith, (ii) asbestos and asbestos-containing materials in any form, and (iii) lead-based paint, radon, or polychlorinated biphenyls. The term "Toxic Substances" means and includes any materials present on the Property that are subject to regulation under the Toxic Substance Control Act ("TSCA"), 15 U.S.C. § 2601, et seq., applicable state law, or any other applicable federal or state law now in force or later enacted relating to toxic substances.

B. Lessee shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal, state, and local environmental permit requirements.

C. Lessee agrees to ensure that the Generating Facility is designed, constructed, operated and maintained in a manner that minimizes environmental impact through appropriate preventive measures and complies with all federal, state and local environmental requirements. Lessee agrees to evaluate methods to reduce the generation and disposal of waste materials as applicable. Wastewater from maintenance or operational activities shall be pretreated with sand and grease traps as applicable.

D. In the case of a release, spill or leak as a result of Lessee's construction, operation or maintenance activities, Lessee shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Lessee shall reimburse the City for any penalties and all cost and expense, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Lessee of any pollutant or hazardous material on the Property.

7.05 PAYMENT OF CITY MINIMUM WAGE

Lessee 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, Lessee expressly acknowledges that Lessee is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Lessee, 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.

7.06 PAYMENT OF CITY PREVAILING WAGE

Lessee 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, Lessee 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, Lessee will receive no additional compensation for increases in prevailing wages or fringe benefits. Lessee shall provide the Auditor with a list of all subcontractors providing any services under the contract. Lessee shall provide the Auditor with electronically-certified payroll records for all covered workers employed under the contract. Lessee 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 Lessee fails to pay workers as required by the Prevailing Wage Ordinance, Lessee 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 Lessee fails to pay required wages and fringe benefits.

7.07 WASTE OR IMPAIRMENT OF VALUE

Lessee agrees that nothing shall be done or kept in the Premises which might impair the value of the Property or which would constitute waste thereon.

7.08 HAZARDOUS USE

Lessee agrees that nothing shall be done or kept on the Premises and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Premises which might be unsafe or hazardous to any person or property. Further, Lessee shall not do or permit to be done any act or thing upon the Premises which will invalidate, suspend or increase the rate of any fire insurance policy required under this Agreement, or carried by the City, covering the Premises or the buildings in which the Premises is located or which, in the opinion of the Manager or his authorized representative, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement. If, by reason of any failure by Lessee to comply with the provisions of this section, after receipt of notice in writing from the City, any fire insurance rate on the Premises or on the buildings in which the same is located, shall at any time be higher than it normally would be, then Lessee shall pay the City, on demand, that part of all fire insurance premiums paid by the City which have been charged because of such violation or failure of Lessee; provided, that nothing herein shall preclude Lessee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the normal operations contemplated

herein. **[Effect if any on City's fire insurance Policy may have to be determined on a site by site basis]**

7.09 STRUCTURAL, ELECTRICAL OR SYSTEM OVERLOADING

Lessee shall operate the Generating Facility and appurtenant utilities in a manner that will not create a hazard by overloading the capacity of any structural, roof load, snow load, wind tolerances, electrical or other system facility. [Additional concerns may appear pending technical review]

7.10 NOISE, ODORS, VIBRATIONS AND ANNOYANCES

Lessee shall conduct its operations in an orderly and proper manner so as not to commit any nuisance in or at the Property or unreasonably annoy, disturb, or be offensive to the public and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous, or objectionable noise, gases, vapors, odors and vibrations and to maintain the lowest possible sound level in its operations.

7.11 ACCESSIBILITY

Lessee shall not do or permit to be done anything which might interfere with or hinder police, firefighting, or other emergency personnel in the discharge of their duties.

SECTION 8
UTILITIES AND SERVICES

8.01 UTILITIES AND SERVICES

Lessee shall pay all charges and fees for utilities used during construction of the Generating Facility including all repair and janitorial services. Lessee shall also be responsible for payment of any and all tap fees.

8.02 ELECTRICITY AND NATURAL GAS

Lessee shall pay all costs for electricity and gas used during construction within the Premises.

8.03 MAINTENANCE

Lessee shall, at its expense, maintain the Premises in accordance with prudent industry standards including redecoration, painting, and repair and replacement of worn furnishings in relation to the Premises and the Generating Facility as the conditions [and Director] or his/her authorized representative may reasonably require. The cost of maintenance, care, and any necessary replacement of the Generating Facility shall be borne by Lessee. Lessee agrees, at its expense and without cost or expense to the City, during the Term hereof that:

A. Lessee shall keep the Generating Facility in good order and condition and will make all necessary and appropriate repairs and replacements in accordance with industry standards and in a good and workmanlike fashion without diminishing the original quality of such improvements;

B. Lessee shall not permit rubbish, debris, waste materials or anything unsightly or detrimental to health, or likely to create a fire hazard, or conducive to deterioration, to remain on any part of the Property or to be disposed of improperly;

C. Lessee shall provide and maintain obstruction lights and all similar equipment or devices now or at any time required by any applicable law, ordinance or municipal, state or federal regulation;

D. Lessee shall be responsible for the removal of snow and ice on the Premises to the extent Lessee or the City need to access the Generating Facility; and

E. The Manager or his authorized representative shall have the right to make reasonable objections regarding the maintenance and appearance of the Premises. Lessee agrees to promptly discontinue or remedy any reasonably objectionable condition within five (5) days after written notice by the Manager or his authorized representative.

8.04 INTERRUPTION OF SERVICES

The parties agree that neither party shall be liable for City's failure to supply any utility services. City reserves the right to temporarily discontinue utility services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations or improvements or whenever by reason of strikes, lockouts, riots, acts of God or any other happenings beyond the control of the City, the City is unable to furnish such utility services. The City shall not be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as cause for abatement of compensation or operate to release the Lessee from any of its obligations hereunder, except as otherwise provided in the Section 11 entitled "Damage, Destruction or Loss."

SECTION 9
INDEMNITY, INSURANCE, AND LIABILITY

9.01 DEFENSE AND INDEMNIFICATION

A. Lessee 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 Lessee 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. Lessee'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. Lessee'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. Lessee 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 Lessee under the terms of this indemnification obligation. The Lessee 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.

9.02 INSURANCE

A. **Full Term of Agreement.** Lessee further agrees to secure at its own expense, and to keep in force at all times during the Term hereof, the following insurance:

(1) General Conditions: Lessee 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. Lessee 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 **Error! Reference source not found.** 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, Lessee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in Section **Error! Reference source not found.** 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 Lessee. Lessee 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 Lessee. The Lessee 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.

(2) Proof of Insurance: Lessee shall provide a copy of this Agreement to its insurance agent or broker. Lessee may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Lessee certifies that the certificate of insurance attached as **Exhibit G**, 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. 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 Lessee'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.

(3) Additional Insureds: For Commercial General Liability, Auto Liability Professional Liability, and Excess Liability/Umbrella (if required) Lessee and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

(4) Waiver of Subrogation: For all coverages, Lessee's insurer shall waive subrogation rights against the City.

(5) Subconsultants: All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Lessee. Lessee shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Lessee agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

(6) Workers' Compensation/Employer's Liability Insurance: Lessee 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. Lessee expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Lessee'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 Lessee executes this Agreement.

(7) Commercial General Liability: Lessee 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.

(8) Business Automobile Liability: Lessee 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.

(9) 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) 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.

(ii) 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) Lessee 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 Lessee will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

B. **Construction Period.** Lessee agrees to secure or require each contractor to secure and to keep in full force and effect during and until completion of the Generating Facility the following insurance:

(1) The Lessee shall obtain and keep in force during the construction period pursuant to this Agreement, insurance policies as described in this Section 9.02 (Insurance).

(2) The City's acceptance of any submitted insurance certificate is subject to the approval of the City's Risk Management Administrator. All coverage requirements specified in Section 9.02 (Insurance) shall be enforced unless waived or otherwise modified in writing by the City's Risk Management Administrator.

(3) Unless specifically excepted in writing by the City's Risk Management Administrator, the Lessee shall include all subconsultants performing services hereunder as

insureds under each required policy or shall furnish a separate certificate (on the form certificate provided), with authorization letter(s) and receipt(s) of premium payment for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements herein.

9.03 GOVERNMENTAL IMMUNITY

Lessee 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.

9.04 NO PERSONAL LIABILITY

No elected official, director, officer, agent or employee of the City, nor any director, officer, employee or personal representative of Lessee shall be charged personally or held contractually liable by or to the other party under any term or provision of this Lease or because of any breach or because of its or their execution, approval or attempted execution of this Lease.

SECTION 10
DEFAULT AND REMEDIES

10.01 DEFAULT

Lessee shall be in default ("Default") under this Agreement if Lessee:

A. Fails to timely pay when due to City the compensation or any other payment required hereunder;

B. Is in default under the associated Solar Power Subscription Agreement with the City for Premises at the Property;

C. Becomes insolvent, or takes the benefit of any present or future insolvency or bankruptcy statute, or makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property;

D. Transfers its interest under this Agreement, except as otherwise permitted herein, without the prior written approval of the City, by reason of death, operation of law, assignment, sublease or otherwise, to any other person, entity or corporation;

E. Fails to complete construction of all of the Generating Facility no later than ___________, 20__, or fails to make sufficient progress on construction of the Generating Facility where it becomes apparent that the construction deadline will not be met, unless such date is extended by the Manager in his/her discretion;

F. Abandons, deserts or vacates the Premises, or fails to operate the Generating Facility;

G. Suffers any lien or attachment to be filed against the Premises, the Property or the Property because of any act or omission of Lessee, and such lien or attachment is not discharged or contested by Lessee in good faith by proper legal proceedings within twenty (20) days after receipt of notice thereof by Lessee, provided, however, that liens and encumbrances on the assets of Lessee and Lessee's affiliates in favor of lenders of Lessee and Lessee's affiliates, including liens and encumbrances against the Generating Facility, shall not be deemed a Default hereunder and are expressly permitted by the City as provided in this Agreement;

H. Fails to keep, perform and observe any other promise, covenant or agreement set forth in this Agreement and such failure continues for a period of more than thirty (30) days after delivery by Manager of a written notice of such breach or default, except where a shorter period is specified herein, or where fulfillment of its obligation requires activity over a period of time and Lessee within ten (10) days of notice commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control; or

I. Gives its permission to any person to use for any illegal purpose any portion of the Property made available to Lessee for its use under this Agreement.

10.02 REMEDIES

If Lessee defaults in any of the covenants, terms and conditions herein, the City may exercise any one or more of the following remedies:

A. The City may elect to allow this Agreement to continue in full force and effect and to enforce all of City's rights and remedies hereunder, including without limitation the right to collect compensation as it becomes due together with interest accrued at the Past Due Interest Rate; or

B. The City may cancel and terminate this Agreement and repossess the Premises, with or without process of law, and without liability for so doing, upon giving (30) days' written notice to Lessee of its intention to terminate, at the end of which time all the rights hereunder of the Lessee shall terminate, unless the default, which shall have been stated in such notice, shall have been cured within such 30 days. The notice shall be final and the City shall at its option (1) cancel and terminate all of the rights hereunder of the Lessee, reenter the Premises, remove therefrom all property of the Lessee and store the same at the expense of the Lessee, or (2) elect to proceed under subparagraph D. below.

C. If the City elects to terminate, Lessee shall be liable to the City for all amounts owing at the time of termination, including but not limited to compensation due plus interest thereon at the Past Due Interest Rate together with any other amount to fully compensate the City for all loss of compensation, damages, and costs, including attorney fees, caused by Lessee's failure to perform its obligations hereunder, or which in the ordinary course would likely result therefrom.

D. The City may elect to reenter and take possession of the Premises and expel Lessee or any person claiming under Lessee, and remove all effects as may be necessary, without prejudice to any remedies for damages or breach. Such reentry shall not be construed as termination of this

Agreement unless a written notice specifically so states; however, the City reserves the right to terminate the Agreement at any time after reentry. Following reentry, the City may make any use of the Premises, or any portion thereof, on such terms and conditions as the City may choose, and may make such repairs or improvements as it deems appropriate to accomplish the new use.

E. Lessee shall be liable to City for all costs of reentry including attorney fees and repairs or improvements. Notwithstanding reentry by the City, Lessee shall continue to be liable for all amounts due as compensation under this Agreement, on the dates specified and in such amounts as would be payable if default had not occurred. Upon expiration of the Term, or any earlier termination of the Agreement by the City, the City shall refund, without interest, any amount which exceeds the compensation, damages, and costs payable by Lessee under this Agreement.

10.03 REMEDIES CUMULATIVE

The remedies provided in this Agreement shall be cumulative and shall in no way affect any other remedy available to City under law or equity.

10.04 DISPUTES

All disputes between the City and Contractor arising out of or regarding the Agreement 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 Manager as defined in this Agreement.

10.05 WAIVERS

No failure of a non-defaulting party to insist upon the strict performance of a term, covenant or agreement contained in this Agreement, no failure by a non-defaulting party to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment during the continuance of any default by a defaulting party shall constitute a waiver of any such term, covenant or agreement or a waiver of any such right or remedy or a waiver of any default by a defaulting party.

10.06 APPROPRIATION

Notwithstanding any other term or condition of this Agreement, it is understood and agreed that the obligation of the City for all or any payment obligation, whether direct or contingent, shall only extend to payment of monies duly and lawfully appropriated by the City Council for the purpose of this Agreement, encumbered for the purpose of this Agreement, and paid into the Treasury of the City. The Lessee acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

SECTION 11
DAMAGE, DESTRUCTION OR LOSS

11.01 DAMAGE TO OR DESTRUCTION OF PREMISES

If the Premises, or any portion thereof, is destroyed or damaged by fire or otherwise to an extent which renders it unusable, the City may rebuild or repair any portions of the building structure destroyed or damaged, and, if the cause was beyond the control of Lessee, the obligation of Lessee to pay the compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If the City elects not to proceed with the rebuilding or repair of the building structure, it shall give written notice of its intent within ninety (90) days after the destruction or damage. Lessee may then, at its option, cancel and terminate this Agreement.

11.02 COOPERATION IN THE EVENT OF LOSS

If the City elects to rebuild, Lessee must replace the Generating Facility at its sole cost and in accordance with the Required Minimum Investment in _______, 20__ dollars, subject to increase or deduction according to the Engineering News Record Building Cost Index for the Denver, Colorado area, and performance standards as set forth in the **Exhibit C**. The City and Lessee shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss or damage.

11.03 LOSS OR DAMAGE TO PROPERTY

The City shall not be liable for any loss of property by theft or burglary from the Premises or for any damage to person or property on the Premises resulting from operating the elevators, or electric lighting, or water, rain or snow, which may come into or issue or flow from any part of the Property, or from the pipes, plumbing, wiring, gas or sprinklers thereof or that may be caused by the City's employees or any other cause, and Lessee agrees to make no claim for any such loss or damage at any time, except for any abatement of compensation or right to insurance proceeds provided for in this Section.

SECTION 12
MISCELLANEOUS PROVISIONS

12.01 TAXES, LICENSES, LIENS AND FEES

Lessee agrees to promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operations hereunder and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the Premises and further agrees not to permit any of said taxes, excises, license fees or permit fees to become delinquent. Lessee also agrees not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Premises or improvements thereto, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman. Lessee agrees to furnish to the Manager, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by it of Social Security, unemployment insurance and worker's compensation insurance, and all required licenses and all taxes. Lessee further agrees to promptly pay when due

all bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against the Premises or improvements thereon which will in any way impair the rights of the City under this Agreement.

12.02 NONDISCRIMINATION

In connection with Lessee's performance pursuant to this Lease, Lessee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, sexual orientation, gender identity or gender expression marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts hereunder for work on the Leased Premises.

12.03 ADVERTISING AND PUBLIC DISPLAYS

Lessee shall not install or have installed or allow to be installed upon or within the Premises, without the prior written approval of the Manager or his/her authorized representative, any sign, either lighted or unlighted, poster or other display of advertising media, including material supplied by manufacturers of merchandise offered for sale, as well as other types of display permitted by City zoning standards. Permission will not be granted for any advertising which fails to comply with FCC standards or City zoning standards, or any advertising material, fixture or equipment which extends beyond the Premises. Each party agrees that it shall not issue any formal press release regarding the Generating Facility without the prior consent of the other, and each party agrees not to unduly withhold, condition or delay any such consent. On all permitted signage at the Property, and in all publicly distributed written materials issued by either party that refer to the Generating Facility by name, such name will contain a statement to the effect attributing ownership and operation of the Generating Facility.

12.02 AGREEMENT BINDING UPON SUCCESSORS

This Agreement, subject to the provisions of the section entitled "Assignment," shall be binding upon and extend to the heirs, personal representatives, successors and assigns of the respective parties hereto.

12.03 AGREEMENT MADE IN COLORADO

This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado.

12.04 ASSIGNMENT

A. The Lessee's right, title and interest in, to, and under this Agreement and the Generating Facility and all proceeds therefrom, may be assigned and reassigned in whole or in part (i) to one or more of Lessee's affiliates, (ii) to one or more affiliates or third parties in connection with a sale-and-leaseback or other financing transaction, (iii) to any person or entity succeeding to all or substantially all of the assets of Lessee, or (iv) to a successor entity in a merger or acquisition

transaction without the necessity of obtaining the consent of the City; provided that any such assignment does not change any obligation of the City. Any such assignment shall not be effective until the Manager of General Services has received written notice, signed by the assignor, of the name and address of the assignee. The City hereby agrees that the Lessee may, without notice to the City, sell, dispose of, or assign this Agreement through a pool, trust, limited partnership, or other similar entity, whereby one or more interests are created in this Agreement or the Generating Facility.

B. The Lessee and the City agree that any such assignment of this Agreement or the Power Purchase Agreement is not intended as the offer or sale of a security, and the Lessee and all assignees hereof understand and agree that: (i) the City shall not be responsible for any information provided to any assignee or subassignee in connection with any such assignment and (ii) if any such assignment constitutes the offering of a security under applicable securities laws, the City shall not be responsible for compliance with any such laws, and any offering or other disclosure document delivered by the Lessee 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.

C. The Manager of General Services shall (i) retain all assignment notices as a register of all assignees (other than registered owners of certificates of participation) and (ii) shall be responsible for making any payments under the terms of this Agreement or the Solar Subscription Agreement only if an appropriation has been effected by the City for such purpose, and *only* to the Lessee at the address set forth in herein, notwithstanding any assignment by the Lessee pursuant to the terms of this section, unless this Agreement is modified in a writing signed by the parties amending this Agreement to so provide for different payment terms.

D. City agrees to notify in writing, an assignee which has been approved by an amendment to this Agreement, at the address to be designated by assignee upon not less than five (5) business days' written notice to City prior to any notice by City hereunder, of any act or event of default of Lessee under this Agreement of which City has knowledge that would entitle City to cancel, terminate, annul, or modify this agreement or dispossess or evict Lessee from the Premises or otherwise proceed with enforcement remedies against Lessee, and assignee shall have the same amount of time as Lessee, but at least ten (10) days with respect to any monetary default and at least thirty (30) days with respect to any non-monetary default, to cure any default by Lessee under the Agreement; provided that in no event shall assignee be obligated to cure any such default.

E. The City consents to assignee accessing the Premises and the Property, upon three (3) days' notice for the purpose of inspecting the Generating Facility.

12.05 FORCE MAJEURE

Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, but in no

event shall this paragraph be construed so as to allow Lessee to reduce or abate its obligation to pay the annual rent herein, or any other compensation due hereunder.

12.06 INCONVENIENCES DURING CONSTRUCTION

A. Lessee recognizes that from time to time during the Term of this Agreement, it may be necessary for the City to commence or complete extensive programs of construction, expansion, relocation, maintenance and repair in order that the Property and any improvements thereon may be completed and operated in accordance with any present or future master layout plan, and that such construction, expansion, relocation, maintenance and repair may inconvenience the Lessee in its operation at the Property. Lessee agrees that no liability shall attach to City, its officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences, and Lessee waives any right to claim damages or other consideration therefrom.

B. Lessee understands and agrees that due to the extended length of the Term of this Agreement, the City may determine that it has become necessary for the City to replace the roof or perform other construction related maintenance of the Property, including the Premises. In the event that the City determines to replace the roof or conduct other maintenance impacting the Property, the City shall provide at least one hundred twenty (120) days' notice to the Lessee. The Lessee shall cooperate with the City to lessen the impact on the Lessee, including temporary relocation of the Generating Facility to another location within the Property as may be directed by the City. The City shall permit the Lessee to resume occupation of the Premises in a reasonably timely manner upon completion of the roof replacement.

12.07 MASTER PLAN

Lessee agrees that no liability shall attach to the City, its officers, agents and employees by reason of any efforts or action toward implementation of any present or future master layout plan for the Property, and waives any right to claim damages or other consideration arising therefrom.

12.09 NO PARTNERSHIP

It is expressly understood and agreed that neither party shall be construed or held to be a partner, associate, agent, representative, or joint venturer of the other party in the conduct of its business. Lessee 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.

12.10 NOTICES

All notices required or permitted to be given to the City or Lessee hereunder shall be in writing and sent by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by facsimile or email (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this section) to:

City: Manager of General Services
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

Lessee: [________________________]
[______________________]
[______________________]

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 the date such notice is mailed or delivered to Lessee or Manager.

12.11 PARAGRAPH HEADINGS

The paragraph headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

12.12 PATENTS AND TRADEMARKS

Lessee represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under this Agreement. Lessee agrees to save and hold harmless the City, its officers, employees, agents and representatives from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Lessee under this Agreement.

12.13 SEVERABILITY

If any provision in this Agreement is held by a court to be invalid, the validity of other provisions herein which are severable shall be unaffected.

12.14 THIRD PARTIES

This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties (except parties to whom the Lessee may assign this Agreement in accordance with the terms hereof, and except any successor to the City) any right to claim damages or to bring any suit, action or other proceeding against either the City or the Lessee because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

12.15 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS

Lessee, its officers, agents and employees shall cooperate and comply with the provisions of the Denver Executive Order No. 94, or any successor thereto, 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 the City's barring Lessee from City Facility or participating in City operations.

12.16 CITY SMOKING POLICY

Lessee and its officers, agents and employees shall cooperate and comply with the provisions of Denver Revised Municipal Code Sec. 24-304 prohibiting smoking in City buildings and Facility. Lessee agrees that it will prohibit smoking by its employees and the public in the Premises.

12.17 ENTIRE AGREEMENT; AMENDMENT

The parties acknowledge and agree that the provisions herein together with the Solar Power Subscription Agreement constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications, shall be valid unless executed by an instrument in writing by all the parties or their respective successors in interest with the same formality as this Agreement; provided, however, the Director shall have the authority to execute agreements which extend the time of performance required under any provision of this Lease or make technical, minor, or non-substantive changes to this Lease. The failure of either party to insist in any one or more instances upon the strict compliance or performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision or condition, but the same shall remain in full force and effect.

12.18 CITY’S EXECUTION OF LEASE

This Agreement is expressly subject to and shall not be or become effective or binding on the City until approved by the City Council and fully executed by all signatories of the City and County of Denver.

12.19 ESTOPPEL CERTIFICATES

From time to time, upon written request by either party (or Lessee's lender), the other party shall provide within thirty (30) days thereafter an estoppel certificate attesting, to the knowledge of the other party, of the other party's compliance with the terms of this Agreement or detailing any known issues of noncompliance. If the other party fails to deliver such a statement to the requesting party within such thirty (30)-day period, then the requesting party may make an additional written demand for such statement and if the other party does not deliver the statement within fifteen (15) days following such additional written demand from the requesting party, then such failure shall constitute an event of default under this Agreement.

12.20 CONFLICT OF INTEREST BY CITY OFFICER

Lessee represents that to the best of its information and belief, no officer or employee of the City is either directly or indirectly a party or in any manner interested in this Lease, except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

12.21 AUTHORITY TO EXECUTE

Lessee represents that the persons who have affixed their signatures to this Lease have all necessary and sufficient authority to bind Lessee. This Lease is expressly subject to, and shall not be or become effective or binding on the City until, approval by its City Council and full execution by all signatories required by law.

12.22 ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS

Lessee consents to the use of electronic signatures by the City. The Lease, and any other documents requiring a signature hereunder, 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 Lease 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 Lease 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.

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EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B
DEPICTION OF PREMISES

EXHIBIT C
CONSTRUCTION TERMS

EXHIBIT D
BOND AND SPECIAL COUNSEL CONSENT

EXHIBIT E
PURCHASE OPTION SUMMARY SCHEDULE

EXHIBIT F
LESSEE'S PROPROSAL

EXHIBIT G
LESSEE'S CERTIFICATE OF INSURANCE