



Solar*Rewards REC Purchase Contract Customer–Sited Photovoltaic (PV) Systems For Third-Party PV Developers

This Contract is made and entered into this ___ day of _____, 20___, by and between Public Service Company of Colorado (“Public Service” or “Company”), d/b/a/ Xcel Energy, a Colorado corporation, whose address is 1800 Larimer Street, Denver, Colorado 80202-5533, _____ (“Customer”), and a third-party developer of photovoltaic (“PV”) systems _____ (“Developer”), whose address is _____, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.” Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in Section 3652 of the Rules Regulating Electric Utilities of the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-3-3652, as of the date of this Contract.

1. **Purchase and Sale.** On the terms and subject to the conditions set forth in this Contract, the Developer agrees to sell and Public Service agrees to purchase Renewable Energy Credits (“RECs”) as described herein. The photovoltaic solar system (the “PV System”) from which the RECs will be generated is to be installed by Developer at _____, the (“Service Address”) with a rated Direct Current (DC) nameplate capacity of ___ kW. Developer shall sell and Public Service agrees to purchase all RECs generated by the PV System at the Service Address for the Term hereof, as provided in subsection 6(e) below.
2. **Purchase Price.** The purchase price for the RECs hereunder shall be expressed in cents per kilowatt hour (kWh), with one REC being generated for each MWh of power generated by the PV System. Public Service shall pay Developer the price of _____ per kWh for RECs purchased hereunder. Such purchase price shall be payable in monthly installments, based upon Public Service’s receipt of RECs generated by the PV System in the immediately preceding month, in the manner described in subsection 6(l) below.
3. **Incorporation of Tariff.** The Parties shall abide by, and this agreement shall be subject to, the Company’s applicable electric tariffs related to photovoltaic systems, as on file with the Colorado Public Utilities Commission and as they may be revised from time to time. In the event of any conflict between the terms of this Contract and Company’s electric tariff, the provisions of the tariff shall control.
4. **Developer’s Representations.** Developer hereby makes the following representations and warranties to Public Service:
 - a) Developer warrants that the person signing this Contract on behalf of Developer is individually authorized and competent to sign this Contract and to bind Developer to the terms hereof.
 - b) Developer will own the PV System at the Service Address set forth above, and the primary business at the Service Address is not the generation of electricity for retail or wholesale sale.
 - c) The proposed PV System nameplate capacity in kilowatts (kW) DC does not exceed the Service Address service entrance capacity.
 - d) If any of the above representations of the Developer are false or incorrect, such false or incorrect representation shall constitute an event of default under this Contract.
5. **Customer’s Representation, Consent and Agreement.** Customer represents that Customer is the retail electric customer of record receiving electric service from Public Service at the Service Address. Customer acknowledges Developer’s obligation under Contract to operate and maintain the PV System on Customer’s premises at the Service Address for a term of 20 years after the PV System becomes

commercially operational. Customer hereby grants consent for Developer to enter on Customer's property as necessary to perform its obligations hereunder. Customer further agrees not to take any action that would interfere with the continued operation of the PV System and uninterrupted production of energy therefrom during the Term of this REC Purchase Contract.

6. Terms and Conditions.

- a) Developer shall be responsible for ensuring that the PV System equipment installed at the Service Address is new equipment and meets all applicable codes, standards, and regulatory requirements at the time of installation.
- b) Developer represents that the PV System shall be sized to supply no more than one hundred twenty percent (120%) of the average annual consumption of electricity by Customer at the Service Address. Developer acknowledges that Public Service's Solar*Rewards Program is only available to PV systems where the estimated annual generation, as determined via PVWATTS, is not more than 120% of historical average annual electric consumption at the Service Address.
- c) "Commercial Operation" is achieved when (a) 100% of the nameplate capacity of the PV System is installed, (b) the PV System has operated without experiencing any abnormal or unsafe operating conditions, (c) all permits necessary to authorize the production and, if applicable, delivery to Public Service of Renewable Energy generated by the PV System have been obtained; (d) all necessary metering has been installed; and (e) any necessary Interconnection Agreement with Public Service has been entered into for purposes of connecting the PV System to Public Service's electric system.
- d) "Date of Commercial Operation" shall be the first calendar day following the date Developer has met all of the criteria of subsection 6(c) above.
- e) This Contract shall become effective upon its execution by the Parties and shall continue in effect for a Term of twenty (20) years from and after the Date of Commercial Operation.
- f) The PV System shall be located at the Service Address at all times during the term of this Contract.
- g) The PV System shall have a nameplate Direct Current output capacity greater than .5 kW and less than or equal to 500 kW.
- h) The Developer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Contract. If during the Term of this Contract the PV System or any of the individual components of the system should be damaged or destroyed, the Developer shall promptly repair or replace the equipment to its original specifications, tilt and orientation at the Developer's sole expense. All of Public Service's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any RECs generated prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed 180 days, Public Service shall have the right, exercisable at its sole option, to terminate this Contract upon not less than 30 days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Contract, and Customer is not a residential customer of Public Service, Public Service shall have the right to terminate this Contract by providing written notice to Customer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Contract is terminated pursuant to this subsection 6(h), then Customer shall pay Public Service liquidated damages in an amount equal to the estimated annual generation of the PV System, as determined via PVWATTS, multiplied by the number of years remaining in the Term as of the effective date of such termination, and further multiplied by the positive difference resulting, if any, by subtracting the price of RECs as set forth in Section 2 above from the weighted-average price for RECs based on

the winning bids under Public Service's most recent request for proposals under its Solar*Rewards program in Colorado.

- i) Any excess Renewable Energy generated by the PV System at the Service Address and not used by the Customer shall be delivered to Public Service. The Customer will receive compensation for this excess Renewable Energy via "net metering" as set forth in the Company's Electric Tariff or other applicable tariffs on file with the Colorado Public Utilities Commission (CPUC) and in effect from time to time.
- j) Developer shall not sell any RECs or deliver any excess Renewable Energy generated from the PV System to any party other than Public Service during the Term of this Contract, and Public Service shall purchase and own all RECs produced by the PV System. Should the PV System produce less than 85% of the annual energy production as detailed in the attached Exhibit 1, the Developer shall reimburse Company for each SO-REC that such annual production falls short of such 85% threshold at the corresponding Contract SO-REC price. In making such determination, annual production shall be determined for each 12-month period effective with the first day of the billing period following the Date of Commercial Operation and each anniversary thereof.
- k) This Contract may be assigned by Developer pursuant to subsection 6(w) below.
- l) Public Service will make the REC payment in the form of a monthly check based on the metered energy recorded each month by a second meter at the Developer's PV System ("PV Meter"). Such REC payment shall be made within thirty (30) days of the meter reading covered. Public Service shall install, own, operate and read the PV Meter and Customer shall reimburse Public Service for the cost of installing the PV Meter. Unless other payment arrangements have been agreed to, Public Service shall be entitled to collect such reimbursement of the PV Meter installation costs by deducting all or a portion of such costs from the monthly REC payment to Customer until fully collected, or as provided for in the Company's tariff.
- m) Nothing in this Contract shall be construed as a representation or warranty by Public Service of the design, installation or operation of the PV System or any component thereof, and Public Service expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.
- n) Public Service shall not be responsible or liable for any personal injury or property damage caused by the PV System or any individual component equipment of the system. Public Service shall not be liable to the Developer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Public Service makes no warranty or representation concerning the taxable consequences, if any, to Developer with respect to the production and sale of Renewable Energy or RECs, and Developer is urged to seek professional advice regarding this issue.
- o) Developer shall indemnify, defend, and hold Public Service, its employees, agents, successors, assigns, subsidiaries and affiliates harmless against any and all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature that may be brought on account of the installation, maintenance, operation, repair, or replacement of the PV System or any component equipment of the system.
- p) Definition of Force Majeure.
 - 1. The term "Force Majeure", as used in this Contract, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a PV System or significantly impair its operation such that it is no longer capable of generating Renewable Energy and associated RECs in commercial quantities; long-term material changes in Renewable Energy flows across the PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of Developer to secure and protect the PV system, terrorism, war, riots, fire, explosion,

insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority), but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

2. The term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of Developer, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or (iii) changes in market conditions that affect the cost of Public Service's or Developer's supplies, or that affect demand or price for any of Public Service's or Developer's products.

q) Applicability of Force Majeure.

1. None of the Parties shall be responsible or liable for any delay or failure in its performance under this Contract, nor shall any delay, failure, or other occurrence or event become an event of default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:
 - i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
 - ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
 - iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
 - iv. when the non-performing Party is able to resume performance of its obligations under this Contract, that Party shall give the other Party written notice to that effect.
2. Except as otherwise expressly provided for in this Contract, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Contract (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure. Notwithstanding this provision, Public Service shall have no obligation to make any payment for Renewable Energy or RECs under this Contract except for actual production as measured by the metering provisions of this Contract.

- r) Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Contract beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to subsection 6(q)1(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Contract upon written notice to the affected Party, without further obligation by any Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the Customer of any obligation to return to Public Service a prorated amount of any rebate paid under any related Rebate Contract pursuant to the Terms and Conditions thereof.

- s) Any breach of a material term or provision of this Contract shall be considered an event of default hereunder. If any disputes arise concerning this Contract, including but not limited to enforcement of any term or condition of the Contract, the prevailing Party in any action brought for the purpose of enforcing such provisions shall be entitled to recover its reasonable attorney fees, expenses and costs of such action from the non-prevailing Party. Prior to commencing any action to enforce this Contract, the non-defaulting Party shall provide written notice of default to the Party asserted to be in default and the Party asserted to be in default shall have a period of thirty (30) days following receipt of such written notice within which to cure the asserted default (or if the asserted default is of a nature which cannot reasonably be cured within such 30-day period, to commence and thereafter diligently pursue a cure thereof.) Failure of any Party to assert a default or to enforce any term or condition of this Contract shall not constitute a waiver of any other similar or other default, or waiver of such term or condition or of any other term or condition of this Contract. Each Party hereby irrevocably and unconditionally waives any right to a trial by jury for the resolution of any dispute arising under this Contract.
- t) This Contract shall be governed by and interpreted in accordance with the laws of the State of Colorado.
- u) This Contract may be executed in two or more counterparts, each of which shall be deemed an original but all constitute one and the same instrument. The Parties agree that a facsimile copy of a counterpart signed by the other Party will be deemed original and binding.
- v) Title, Risk of Loss, and Warranty of Title. As between the Parties, Developer shall be deemed to be in control of the Renewable Energy output from the PV System up to and until delivery and receipt by Public Service at any net meter and Public Service shall be deemed to be in control of such energy from and after delivery and receipt at any such net meter. Title and risk of loss related to the Renewable Energy shall transfer from Developer to Public Service at any net meter. Developer warrants and represents to Public Service that it has or will have at the time of delivery good and sufficient title to all Renewable Energy output and/or the ability to transfer good and sufficient title of same to Public Service.
- w) This Contract shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by any Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld.
- x) By executing this Contract, Developer grants to Public Service permission to share information concerning the location of the generation of the RECs sold to Public Service by Developer under this Contract with other Colorado public utilities, municipal utilities, electric cooperatives and other entities that may be involved with REC transactions for the purpose of ensuring that the RECs associated with the Developer's PV System have not been sold to another entity and for any other legitimate business purpose, in Public Service's sole discretion.
- y) Relationship of the Parties. Nothing herein is intended nor shall ever be construed to create a joint venture, partnership or any other type of association between the Parties, nor shall any Party have the right to act in behalf of or bind the other for any liability, cost, expense or undertaking except as set forth in this Contract.
- z) Amendments or Modifications. No amendment, modification, or change of this Contract shall be binding upon the Parties unless such amendment, modification, or change is in writing and executed by the Parties.
- aa) Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction that ambiguous provisions shall be interpreted against the drafter shall not apply to this Contract.
- bb) No Third-Party Beneficiaries. Except as otherwise specifically provided herein, this Contract is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations

herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

- cc) Remedies Cumulative. Except as otherwise specifically provided herein, each remedy provided for under this Contract shall be taken and construed as cumulative and in addition to every other remedy provided for herein or available at law or in equity.
- dd) Agreement Subject to Laws and Regulations. This Contract and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Contract, the services to be performed hereunder or any of the Parties hereto.
- ee) Notices. All notices, reports or other communications provided for in this Contract shall be in writing and shall be deemed to have been sent when delivered by hand, sent by facsimile with verification, or when deposited in the United States mail, postage prepaid and properly addressed or when sent via overnight courier:

If to Public Service:

Xcel Energy
Attn: Solar*Rewards
414 Nicollet Mall, 6th Floor
Minneapolis MN 55401
Fax: 1.800.252.4371

If to Developer:

If to Customer:

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

- ff) Entire Agreement. This Contract, together with all Exhibits attached hereto, constitutes the entire understanding and agreement between the Parties with respect to the purchase of RECs from Developer, and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Contract shall be in writing and signed by both parties hereto.

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

Developer Name (printed): _____

Developer Representative: _____ Title: _____

Developer Signature: _____ Date: _____
As authorized agent for <developer name>

Customer Name (printed): _____
As authorized agent for <customer>

Customer Signature: _____ Date: _____

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

By: _____ Date: _____
Lee Gabler

Title: Director, DSM and Renewable Operations

Please upload this signed contract to the application website, or email to the Solar*Rewards program at solarprogram@xcelenergy.com

Program Manager Signature: _____

Exhibit 1

Actual System Installation Information

Installer completes the following *AFTER* project completion and installation

Customer name _____

Installation address _____

Installer name _____

Actual price for PV installation without batteries (attach PV invoice) _____

Xcel Energy Account Number: _____

Date of PV installation _____

Date of town / municipal / county inspection _____

Name of inspection entity (town, municipal, county) _____

Amount of rebate and REC payment (\$) _____

Date of installer inspection _____

Please check the appropriate box(es), if this is the same as the application for each item

- Tilt _____° (90° is vertical, 0° is flat)
- Orientation _____° (180° is S, 90° is E, 270° is W)
- Manufacturer of PV panels installed _____
- Model # of PV panels installed _____
- STC Rating (watts DC) _____
- Manufacturer of PV inverter installed _____
- Model # PV inverter installed _____
- Power rating _____
- PVWatts estimate of annual kWh generated _____
- Efficiency % _____
- Battery backup? Yes No

As the installer for this project, I certify that the above-referenced PV equipment was installed at the customer address.

Installer's Signature

Date

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