



**Town of New Castle**

450 W. Main Street

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New Castle, CO 81647

**Office of the Town Administrator**

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## Memorandum

**Date:** May 2, 2019  
**To:** Mayor and Council  
**Subject:** Council Agenda Item – Microgrid Contract  
**From:** David Reynolds

**Purpose:**

The purpose of this agenda item is to briefly review the **Community Solar Services Agreement** which was executed between the Town of New Castle and Microgrid LLC on Nov. 7<sup>th</sup>, 2017. This agreement provided that upon completion of a local Solar Farm Facility (under construction at the time), the Town would subscribe to the use of solar power for its needs throughout Town facilities. As the proposed Solar Farm is now complete, Microgrid (now Pivot Energy) is seeking to complete the needed documents required to get the project finalized and operational. Pivot Energy has requested that the Town sign a Subscriber Estoppel Certificate which tells its lenders that the Town is moving forward as agreed in 2017. Because the Subscriber Estoppel Certificate states that the Subscriber (the Town) is “Duly Authorized” to perform its obligations under the Agreement (paragraph 3), our Town Attorney has suggested that Town Council review the document and “Duly Authorize” either the Mayor or Town Administrator to sign the Estoppel Certification.

April 14, 2019

Tom Baker  
Town of New Castle  
PO Box 90  
New Castle, CO 81647

Dear Tom Baker,

We have great news – the community solar gardens are about to be energized! This means you will start to receive solar bill credits soon. Pivot Energy would like to thank you for participating in community solar and for your patience during the long development process. You are joining hundreds of subscribers in Colorado all of whom are responsible for making Colorado one of the strongest markets for community solar in the country.

As part of the final on-boarding for your allocation in these gardens, please review and sign the attached estoppel. Our final part of financing is to close our tax equity financing. Our tax equity partner requires each subscriber sign an estoppel agreement. The Community Solar Services Agreement (SSA) is the contract you signed in order to join the community solar garden. Part 31c of the SSA mentions that we may need to seek out this estoppel and will need your cooperation when that time comes. The purpose of the document is to provide additional assurance that the subscriber can enter into the contract and begin receiving the benefits.

Your project(s) are expected to be operational in May 2019. Pivot Energy will send you another notice after the project(s) are online and you will receive a link to log into the SunCentral portal where you can see your solar production and manage your account. Savings will start to accrue in the month after the garden(s) are online. Please reach out to your Pivot Energy Account Manager if you have any questions.

Sincerely,

Jon Sullivan

**Jon Sullivan** | Vice President, Project Development  
jsullivan@pivotenergy.net  
D 303.718.3291 | LinkedIn

## SUBSCRIBER ESTOPPEL CERTIFICATE

This Subscriber Estoppel Certificate (“*Certificate*”), dated April \_\_, 2019 is given by Town of New Castle (“*Subscriber*”) pursuant to the Community Solar Services Agreement listed on the attached Schedule A (“*Agreement*”). Capitalized terms used but not defined in this Certificate have the meanings given in the Agreement.

In order to finance the Project, Operator (defined on Schedule A) and its affiliates are entering agreements obtaining an investment from and establishing a Lender’s Security Interest with 1st Source Bank, an Indiana corporation (“*Lender*”). This Certificate is being delivered for the benefit of Lender.

Based on the foregoing, and recognizing that Operator, Lender and each of their affiliates will rely on this Certificate, Subscriber states:

1. As of the date of the Agreement and of this Certificate, Subscriber confirms all covenants, representations, and warranties in the Agreement and confirms the Agreement is in full force and effect and binding on and enforceable against Subscriber. The Agreement has not been amended, and together with the Agency Agreement, there is no other agreement between Operator and Subscriber regarding the Project.
2. Subscriber’s current subscribed allocation of Production Capacity under the Agreement is as set forth in Schedule A.
3. The execution and delivery by Subscriber of the Agreement and this Certificate have been duly authorized and do not require any approvals or consents which have not been obtained, and Subscriber is duly authorized to perform its obligations under the Agreement.
4. Neither Subscriber nor, to Subscriber’s knowledge, Project Company is in breach or default under the Agreement, and all conditions to performance thereunder have been satisfied or waived.
5. There is no litigation, action, proceeding or investigation pending or, to Subscriber’s knowledge, threatened against Subscriber before any court or governmental authority regarding the Agreement or that would affect Subscriber’s ability to carry out the transactions contemplated by any Agreement.
6. Subscriber acknowledges the notice address of Operator and Lender as stated in Schedule A, and that Lender constitutes a “Lender” pursuant to Section 21 of the Agreement, entitled to all benefits given to such person therein.

IN WITNESS WHEREOF, Subscriber has caused this Certificate to be duly executed as of the day and year first above written.

Town of New Castle

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Schedule A

Agreement

Community Solar Services Agreement, dated November 9, 2017, between Operator and Subscriber, regarding a Production Capacity subscription of 767 kW (DC).

Operator

“**Operator**” means Mesa CSG 1, LLC, a Colorado limited liability company (as successor in interest to Microgrid CSG Portfolio 1 LLC).

Operator’s Notice Address

The notice address for Operator under the Agreement is:

Mesa CSG 1, LLC  
c/o Standard Solar, Inc.  
1355 Piccard Dr. Suite 300  
Rockville, MD 20852

Lender’s Notice Address

The notice address for Lender under the Agreement is:

1st Source Bank  
100 N. Michigan St  
South Bend, IN 46601  
Facsimile: 574-235-2227  
Attention: Russell Cramer  
Email: [cramerr@1stsource.com](mailto:cramerr@1stsource.com)

## Community Solar Services Agreement

<b>Subscriber Name</b>	Town of New Castle
<b>Contact Name</b>	Tom Baker or Town Manager
<b>Email</b>	<a href="mailto:tbaker@townofnewcastle.org">tbaker@townofnewcastle.org</a>
<b>Phone</b>	(970) 984-2311 Ext. 100

<b>Billing Address</b>	P.O. Box 90	Street
	New Castle	City
	Colorado	State
	81647	Zip
	Garfield	County
<b>Meter Site Address</b>  (Additional Site Addresses, if any, listed in Attachment C)		Street
		City
		State
		Zip
		County
<b>Utility</b>	Xcel Energy	

<b>Subscription Terms</b>	Production Capacity	767	kW (DC)
	Price	0.06501	\$ / kWh
	Escalator	1.35	% / Year
<b>"Community Solar Garden" under applicable Colorado law ("Project")</b>	Operator	Microgrid CSG Portfolio 1 LLC	
	Project County	Mesa County and Garfield County	
	Project(s) Nameplate Capacity	4,000	kW (DC)

1. Parties. This is a Community Solar Services Agreement ("Agreement") between the "Operator" (identified on the cover page of this agreement) and you, the subscriber identified on the cover page and retail electric service customer of the Utility. References to the Operator include the words "we", "our", and "us." References to you include the words "you" or "Customer".
2. The Community Solar Array. The Operator intends to construct, own, operate, and maintain the Project as described on the cover page of this Agreement. You are the electricity customer of record at one or more premises within the Utility's service territory. Applicable law allows you to subscribe to a share of the solar energy produced from the Project and attribute your share of solar energy to one or more of your metered premises. We refer to the premises covered by this Agreement listed in Attachment C as your "Location" or "Locations." You are not required to invest money in the Project.
3. Customer's Production Capacity. You are eligible to participate in the Project and have subscribed to the amount of the Project's production shown in kilowatts (DC) ("kW (DC)") on the cover page, defined as your "Production Capacity". We measure the amount of solar energy produced by your Production Capacity in kilowatt hours ("kWh"), and your actual Production Capacity is called your "Solar Energy."
4. Utility Agency Agreement. The Operator intends to enter into an agreement with the Utility (sometimes called a "Community Solar Rewards Community Producer Agreement" or "Agency Producer Agreement" and referred to as an "Agency Producer Agreement" in this Agreement) under which the Operator and the Utility take the following actions in the implementation of the Project:
  - A. Operator. The Operator will be responsible for operating the Project; for delivering and selling all solar energy produced and the associated renewable energy credits ("RECs") to the Utility; for providing the Utility with monthly information that identifies you and your Solar Energy; and for sending you a monthly invoice for your Solar Energy, which will be payable to the Operator.
  - B. The Utility. The Utility is responsible for accepting deliveries of your Solar Energy; for providing you with a credit in dollars for your Solar Energy on your retail electric service bill (your "Bill Credit"); and for issuing a check to the Operator for the RECs associated with your Solar Energy.
5. Acknowledgements and Agency Producer Agreement. When you sign this Agreement, you agree to the Acknowledgements in Attachment A and to execute the Agency Producer Agreement. The Agency Producer Agreement gives us the authority to act as your exclusive agent to sell your Solar Energy and RECs to the Utility, and makes us your agent for the purpose of communicating information to the Utility used to calculate and apply your Bill Credit.
6. Consent to Disclose Utility Customer Data. When you sign this Agreement, you agree to sign a "Consent to Disclose Utility Customer Data" that authorizes the Utility to share information with us about your past and present electric usage at your Locations and will be used to verify the extent of your eligibility to participate in the Project. You will let us know if there are any changes in your eligibility status.
7. Agreement Term. This Agreement is effective upon execution. The term of this Agreement is 240 consecutive calendar months starting on the first day of the first month after the initial production of kWh (excluding test production) by the Project as measured at the Project's production meter. The responsibility of the Operator to facilitate the application of Bill Credits by the Utility will terminate after the Utility applies the Bill Credit for the 240th month of production of Solar Energy to your account.
8. Payments. Unless otherwise set forth in this Agreement, the payment amount you owe the Operator ("Monthly Payment") is equal to the kWh of Solar Energy produced and delivered to the Utility during a 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 Attachment B. You agree to pay the full Monthly Payment within thirty (30) days after the date of our invoice.

If in any given month Customer's rate as set forth in Attachment B ("Rate") exceeds the rate used by the Utility for that same month to calculate Customer's Bill Credit ("Bill Credit Rate"), then Customer's Rate will be reduced to an amount equal to the Bill Credit Rate (each such reduction a "Reduction"); provided, however, the Rate will never be lower than the year one Rate (as shown in Attachment B).

If at any time after a Reduction, the Bill Credit Rate increases, then the Rate will increase to equal the Bill Credit Rate (each such increase an "Increase"); provided, however, the Rate will never exceed the Rate set forth in Attachment B and that corresponds to the year in which the Increase occurs. The parties acknowledge and agree the percentage amount of an Increase may exceed the annual percentage escalator that was used to calculate the escalation of the Rates set forth in Attachment B, but only to the extent necessary to cause the Rate to equal the Bill Credit Rate, and not to exceed the Rate set forth in Attachment B that corresponds to the year in which the Increase occurs.
9. Late Payments. If you pay us late, we will charge you interest on the unpaid balance at the rate of one percent (1%) per month.
10. Customer Eligibility. The Operator will ensure that all premises listed in Attachment C of this Agreement comply with any applicable law or Utility requirements at the time of execution of this Agreement.
11. Bill Credits. The Utility is responsible for accepting deliveries of your Solar Energy and for providing you with a Bill Credit in dollars for your Solar Energy on your retail electric service bill. The amount of your Bill Credit is based on various factors controlled by your registered meter type, by applicable tariff, and pertinent regulations.
12. Renewable Energy Credits. The Agency Producer Agreement requires us to transfer your Solar Energy and RECs to the Utility in

exchange for your Bill Credit. You hereby irrevocably assign and transfer to us your RECs and the right to receive and retain any payments from the Utility attributable to your Solar Energy and RECs. You agree that if you transfer your Production Capacity to another person (any such transfer being subject to the limitations and/or requirements of this Agreement) your transferred interest in your Production Capacity will continue to be subject to the assignment of the RECs to the Operator and will not affect the Operator's ongoing right to receive any payments from the Utility for the RECs associated with your Solar Energy and transferred Production Capacity. There may be additional, non-power related benefits associated with your Production Capacity, such as environmental, tax, or future benefits. You agree that we or our designee are entitled to all such benefits, regardless of their ownership. If we need you to sign any additional documents to evidence our agreement relating to your RECs and any other benefits that may be associated with your Production Capacity or Solar Energy, you agree to do so at our request, provided that you will have the opportunity to review and evaluate any such documents before signing them in a timely manner, and acceptance will not be unreasonably withheld.

13. Changes in Your Participation; Substitution of New Premises. You will give us written notice if you want to make changes to this Agreement, transfer some or all of your Production Capacity, or substitute Premises. We will consider any such request, at the time of receipt, based on our then-applicable eligibility and/or credit requirements and any Utility requirements, and will, in our discretion, determine whether to authorize the request. We may request additional information in connection with a request, and you will promptly provide that information. Further, any authorization will be contingent on your and (as applicable) your transferee's execution of such documents as we, our Lender (defined below), and/or the Utility may request.
14. Taxes. The Monthly Payment does not include taxes. The Operator acknowledges that the Customer is a tax exempt entity. Upon execution, Customer will provide the Operator with its exemption certificate. In the event that you become a taxable entity, you agree to either pay or reimburse us for any and all taxes assessed on the generation, sale, delivery, or consumption of your Solar Energy or your Bill Credits. The term "taxes" includes any federal, state, and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, or transaction tax, and other taxes, regulatory fees, surcharges, or other similar charges, but does not include any income taxes imposed on the Operator's revenues due to the sale of energy under this Agreement, which are solely the Operator's responsibility.
15. Non-Appropriation Event. The Operator acknowledges and agrees that in accordance with Colorado constitutional restrictions, Customer has appropriated funds necessary to satisfy the payments that are required to fulfill its obligations under this Agreement for the year in which Customer has executed this agreement. The payment of any compensation due under this Agreement for any year beyond the first year provided for in this Paragraph 15 is contingent upon annual appropriation of funds in accordance with applicable law. During the Term of this Agreement, you agree in good faith that your staff will include the amounts to become due under this Agreement in your budget request for each fiscal year for funding your energy costs.
  - A. In any fiscal year, your failure to make an appropriation for the purchase of electricity from any source at any of your locations for a future fiscal year, including the encumbrance for this Agreement will be a non-appropriation event (a "Non-Appropriation Event"). If a Non-Appropriation Event occurs, you agree to assign your Production Capacity to us. We will have the right to retain your Production Capacity, and the Bill Credits and RECs associated with your Production Capacity, for the duration of the Non-Appropriation Event. You will not have the right to receive Bill Credits during the occurrence of a Non-Appropriation Event.
  - B. Termination. If a Non-Appropriation Event occurs, we have the right in our sole discretion to terminate this Agreement, without further obligation by either party. You agree to assign your interest in your Production Capacity to us upon termination of this Agreement. If a Non-Appropriation Event occurs and we do not terminate this Agreement, then we acknowledge and agree that for the duration of that Non-Appropriation Event you will have no financial obligations under this Agreement.
  - C. Transfer of Production Capacity. We may transfer all or a portion of your Production Capacity to another customer for the duration of a Non-Appropriation Event.
  - D. Budget Requests. Unless we choose to terminate this Agreement for a Non-Appropriation Event, your staff will in good faith continue to include the amounts to be paid to the Operator pursuant to this Agreement in each subsequent fiscal year of the Term in your budget request for funding of your energy costs for each fiscal year, and if an appropriation for such amounts is made for a future fiscal year our respective obligations under this Agreement may be reinstated in our sole discretion. You will not be liable for any Monthly Payment during the respective fiscal year associated with the Non-Appropriation Event. If you make ten (10) successive annual requests to include the amounts to be paid to the Operator pursuant to this Agreement that are denied, you will no longer be required to make further annual appropriation requests under this Agreement.
16. Insurance. We will insure the Project during the term of this Agreement in accordance with our contract with the Utility and applicable law, regulations, and tariffs. You are not responsible for insuring your Production Capacity.
17. Customer Default. The following events will constitute an event of default on your part ("Customer Default"):
  - A. Except as otherwise expressly permitted in this Agreement, you attempt to terminate this Agreement before the end of the Term;
  - B. You fail to pay any amount when due under this Agreement and such failure continues for thirty (30) days after you receive notice from us of such failure to pay;
  - C. You are in breach of any material representation or warranty, or fail to perform any material obligation as set forth in this Agreement and your breach or failure is not cured within thirty (30) days after you receive notice from us;

- D. You admit in writing your insolvency, assign your assets for the benefit of creditors, enter any bankruptcy or reorganization proceeding (either voluntary or involuntary), are otherwise adjudicated bankrupt or insolvent, or have all or substantially all of your assets subject to attachment, execution or other judicial seizure; or,
- E. You attempt to claim any RECs or non-energy related benefits in connection with Solar Energy that conflict with the terms of this Agreement.
18. Operator Default. The following events will constitute an event of default on our part ("Operator Default"):
- A. We are in breach of any material representation or warranty, or fail to perform any material obligation as set forth in this Agreement and our breach or failure is not cured within thirty (30) days after notice from you; or
- B. We admit in writing our insolvency, assign our assets for the benefit of creditors, enter any bankruptcy or reorganization proceeding (either voluntary or involuntary), are otherwise adjudicated bankrupt or insolvent, have all or substantially all of our assets subject to attachment, execution or other judicial seizure.
19. Our Remedies in Case of Your Default. If you are in default under this Agreement, we may take any one or more of the following actions at our option and in our discretion. If the law requires us to do so, we will give you notice and wait the stipulated period of time required before taking these actions. We may: terminate this Agreement and recover damages; take any action to correct your default and to prevent or reduce our loss; Proceed, by appropriate court to enforce performance of this Agreement and to recover damages for your default (including court costs attorneys' fees to the fullest extent allowed by law); and pursue any other remedy available to us in this Agreement or by law.
20. Your Remedies in Case of an Operator Default. If an Operator Default results in the failure or inability of the Project to produce Solar Energy for a period of three hundred sixty five (365) consecutive days, you may terminate this Agreement without further obligation. In the case of any other Operator Default, your remedy is to proceed, by appropriate court, to enforce performance of this Agreement and to recover damages (including court costs and attorneys' fees to the fullest extent allowed by law) and pursue any other remedy available to you in this Agreement or by law.
21. Financing Accommodations. In order to finance the construction and installation of the Project, we will borrow money from one or more lenders (each a "Lender") who will require that we provide them with a security interest in the Project, in our contracts with other customers, and in this Agreement and any amounts you owe us. We will provide you with the name and contact information for each Lender to allow you to provide any notice to such Lender as may be required by this Agreement. For the benefit of our Lenders, you agree to the following provisions. You understand that we may finance the acquisition, development, installation, operation and maintenance of the Project with financing or other accommodations from one or more financial institutions and that our obligations to the Lender may be secured by, among other collateral, a pledge or collateral assignment of this Agreement, and the amounts due us under this Agreement and a security interest in the Project (collectively, the "Lender's Security Interest"). In order to facilitate the necessary financing, you consent to our granting the Lender's Security Interest. You acknowledge and agree that you and all of your rights under this Agreement are and will be subject and subordinate to the Lender's Security Interest (as may be later modified by any and all renewals, modifications, supplements, amendments, consolidations, replacements, substitutions, additions, and extensions).
22. Lender's Rights: Additional Information. The following provisions will apply for the benefit of our Lenders:
- A. A Lender will be entitled to, but not obligated to, exercise any of our rights and remedies under this Agreement. The Lender will also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the Project.
- B. A Lender will have the right, but not the obligation, to pay all sums due from us under this Agreement and to perform any other act, duty or obligation required of us, and to cure any Operator Default in the time and manner provided by the terms of this Agreement. Except as provided below, nothing requires a Lender to cure an Operator Default, to perform any act, duty or obligation of the Operator under this Agreement, unless the Lender has succeeded to our rights under this Agreement, but Customer hereby gives Lender the option to do so.
- C. If the Lender exercises its remedies under the Lender's Security Interest in the Project, including any sale by the Lender, whether by judicial proceeding or under any power of sale, or any conveyance from us to Lender (or its assignee) in lieu of a sale, the Lender will give you notice of the transfer or assignment of this Agreement. If Lender exercises these remedies, it will not constitute a default under this Agreement, and will not require your consent.
- D. Upon any rejection or other termination of this Agreement under any process undertaken with respect to us under the United States Bankruptcy Code, or otherwise, you agree to enter into a new agreement with a Lender or its assignee under the same terms as this Agreement (except for those matters that have been satisfied) and for the remainder of the term if a Lender requests you to do so within ninety (90) days of the termination or rejection of this Agreement. You agree to enter such new agreement within thirty (30) days after your receipt of the Lender's request.
23. Lender's Right to Cure. Regardless of any contrary term of this Agreement:
- A. You will not exercise any of your rights under this Agreement in the case of an Operator Default unless you have given the Lenders written notice of that default simultaneously with your delivery of that notice to us. In your notice, you will describe the event giving rise to the Operator Default. In addition to our cure period, the Lenders will have an additional thirty (30) days (to run consecutively with our cure period) after the Lender's receipt of such notice or any longer period provided for in this

Agreement to cure the subject Operator Default. If the Operator Default reasonably cannot be cured by the Lender within the period provided and the Lender commences and continuously pursues cure of the Operator Default within that period, the period for cure will be extended for so long as required for the Lender to cure the default, but only if the Lender exercises continued efforts to cure the default. The Operator's and Customer's respective obligations will otherwise remain in effect during the cure period.

- B. If a Lender or its assignee (including any buyer or transferee) acquires title to or control of our assets and within the applicable time periods cures all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement and which are capable of cure by a third person or entity, then the Lender or third party buyer or transferee will no longer be in default under this Agreement, and this Agreement will continue in full force and effect.
  - C. At the request of a Lender and/or its assignee, you agree to execute and deliver any document, instrument, or statement required by law or otherwise as reasonably requested by Lender or its assignee in order to create, perfect, continue or terminate the security interest in favor of Lender in all assets of the Operator (which include this Agreement), and to secure the obligations evidenced by Lender's Security Interest, provided that you will have the opportunity to review and evaluate any such documents before signing them in a timely manner, and acceptance will not be unreasonably withheld.
24. Cooperation. Upon a Customer Default or an Operator Default, the parties agree to cooperate with each other so as to preserve our right to the RECs and other non-energy benefits attributable to your Production Capacity and Solar Energy.
25. Tax Matters. We agree that, for Federal income tax purposes, the transactions described in the Agreement will be characterized as follows:
- A. You will purchase your Solar Energy from the Operator.
  - B. Your Solar Energy purchase will be treated as a service contract under Internal Revenue Code Section 7701(e).
  - C. We will sell your Solar Energy to the Utility as your agent under Solar\*Rewards Community Agency Producer Agreement.
  - D. You will receive a monthly Bill Credit from the Utility in exchange for your Solar Energy.
  - E. Regardless of what any other provision of this Agreement may say to the contrary, you will not bear any significant financial burden if there is nonperformance by the Operator 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 you and includes you being deemed to bear any significant financial burden.
  - F. Regardless of what any other provision of this Agreement may say to the contrary, you will not be deemed to receive any significant financial benefit if the operating costs of the Project 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 Project 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 you.
  - G. Regardless of what any other provision of this Agreement may say to the contrary, or what any other agreement between the parties may say to the contrary, you will not have an option to purchase, and you will not be required to purchase, any portion of the Project. This prohibition also applies to any party related to you.
  - H. Regardless of what any other provision of this Agreement may say to the contrary, you will have no right to operate the Project, as that term is used in Internal Revenue Code Section 7701(e)(4)(A)(i). This prohibition also applies to any party related to you.

We agree 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 (a) through (h) above, unless the law in effect at the time requires a party to do otherwise.

26. Force Majeure. If we are unable to perform all or some of our obligations under this Agreement because of a Force Majeure Event, we will be excused from whatever performance is affected by the Force Majeure Event, provided that: (a) as soon as is reasonably practical, we provide you with notice describing the Force Majeure Event; (b) the suspension of our obligations is limited to the scope and the duration required by the Force Majeure Event; and (c) no obligation of ours that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event will be excused as a result of such Force Majeure Event.

"Force Majeure Event" means any event, condition or circumstance beyond the control of and not caused by the Operator's fault or negligence. It will include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of God; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; tornado; hail; volcanic activity; abnormal weather condition or actions of the elements; hurricane, flood; lightning; wind; drought; the binding order of any governmental authority (provided such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any governmental authority (provided such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, power or voltage surge caused by someone other than us, including a grid supply voltage outside of the standard range specified by the Utility's equipment or products (but not to the extent that any such availability

of any of the foregoing results from the Operator's failure to have exercised reasonable diligence); any other Utility delay or emergency; failure of equipment not utilized by us or under our control; and, force majeure affecting one (1) or more of our subcontractors.

27. Termination upon Force Majeure. If we are prevented from performing under this Agreement by reason of Force Majeure for a consecutive period of three hundred sixty-five (365) calendar days during the Term, then either Party may terminate this Agreement, without liability on either of your or our parts to the other, upon thirty (30) days written notice. In no event shall a Force Majeure Event excuse a party from the payment of money or the performance of its indemnity obligations under this Agreement.
28. Operator Indemnity. Subject to the limitations contained in Section 299, we agree to indemnify, defend and hold you harmless from and against any damages or losses directly attributable to a material breach of our obligations under this Agreement.
29. Limitations of Liability. Except for our indemnity obligations under Section 28 with respect to third party claims, we will not be liable to you for general, special, punitive, exemplary, indirect, incidental or consequential damages arising from or out of this Agreement. Our total liability to you under this Agreement will in no event exceed the aggregate of the payments made by you under this Agreement in the twelve (12) months that preceded your claim against us. That amount will be your sole and exclusive remedy and all other remedies or damages at law or equity are waived. We are not responsible for any consequential, incidental, punitive, exemplary or indirect damages, lost profits or losses relating to this Agreement, in tort or contract, including any negligence or otherwise. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE OPERATOR MAKES NO OTHER WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE PROJECT OR THE OPERATOR'S OBLIGATIONS UNDER THIS AGREEMENT. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.
30. Dispute Resolution. Each party agrees that to expedite and control the costs of disputes, the resolution of any dispute relating to this Agreement ("Dispute") will be resolved according to the following procedures:
  - A. Unless otherwise agreed in writing, the parties agree to continue to perform each of our respective obligations under this Agreement during the course of the resolution of the Dispute.
  - B. Each party agrees to first try to informally resolve any Dispute. Accordingly, neither party will start a formal proceeding for at least forty-five (45) days after notifying the other in writing of the Dispute. Each party agrees to send our notice to the billing address set forth on the first page of this Agreement.
  - C. If, after the informal dispute resolution process set forth in Subsection B above does not result in a resolution of the dispute, the parties shall be free to seek any available relief.
  - D. To the fullest extent permitted by applicable law, the Parties hereby unequivocally waive the right to a jury trial of any matter related to this Agreement.
31. Miscellaneous.
  - A. Entire Agreement; Amendment; Waiver. This Agreement contains the entire agreement and understanding between the parties concerning this Agreement and supersedes any prior or contemporaneous agreement, either written or verbal. Any changes or amendments to, or waivers of, any provisions of this Agreement will only be effective if they are in writing and signed by both of us. Our failure at any time to require strict performance by you of any of the provisions of this Agreement will not waive or diminish our right thereafter to demand strict compliance by you of that provision or of any other provision of this Agreement. If any provision of this Agreement is determined to be unenforceable, the remaining provisions will be enforced in accordance with their terms or will be interpreted so as to make them enforceable. The terms of this Agreement that expressly or by their nature survive termination shall continue thereafter until fully performed, which will include without limitation the obligation to make payments.
  - B. No Ownership; Liens. At no time during the term of this Agreement will you have any ownership in the Project, and nor will you have any lien of any kind, nature, or type in the Project. To the fullest extent permitted by applicable law, you hereby waive all such rights.
  - C. Further Assurances. You will perform all acts as we or a Lender request to give effect to the intent and purposes of this Agreement, including: giving consents to any assignments, encumbrances, pledges, or transfers permitted under this Agreement; executing estoppel certificates requested by us, or an existing or prospective Lender; providing such additional credit, financial, or electricity usage information concerning you as we or an Lender or prospective Lender may request; and, executing amendments to this Agreement, as may be required by any Lender or prospective Lender or assignee, provided, however, no such amendment will cause a material change to your, our, or a Lender's obligations or rights under this Agreement.
  - D. Binding Effect. This Agreement will be binding upon and inure to the benefit of each of us, and to our successors and permitted assigns, but nothing in this Agreement, express or implied, is intended to confer or will confer upon any other entity or person any benefits, rights or remedies except as expressly set forth in this Agreement.
  - E. Authority. You have the full power and authority to execute and deliver this Agreement and to perform your obligations hereunder. Your execution and performance of this Agreement and of your obligations under this Agreement have been duly authorized by all necessary action.

- F. Marketing and Promotional Materials. We will have the right to use graphical representations or photography of the Project in our marketing and promotional materials. You agree to the use of your name and logo, if applicable, in our marketing materials in connection with the Project and any future Community Project or similar projects undertaken by the Operator. We agree not to disclose any other information in connection with our marketing and promotional materials.
- G. Assignment by The Operator. The Operator may assign this Agreement along with all of our rights and obligations to any affiliate or third party without notice, for any purpose, including, the collection of unpaid amounts, or in the event of an acquisition, corporate reorganization, merger or sale of substantially all of its assets to another entity.
- H. Counterparts. This Agreement may be signed in two or more counterparts with the same effect as if each party had signed and delivered the same counterpart, and shall become operative when each party has signed and delivered at least one counterpart. Each counterpart will be deemed to be an original for all purposes, and all counterparts together constitute one Agreement. Delivery of a counterpart of this Agreement by facsimile or other electronic means will be good and sufficient delivery, and a facsimile or other electronic transmission evidencing execution shall be effective as a valid and binding agreement between the parties for all purposes.

I have read this Agreement and its Attachments in their entirety, and I acknowledge that I have received a complete copy of this Agreement.

Operator

*Jon Sullivan*

Signature

Jon Sullivan

Printed name

Director of Project Development

Title

11/9/17

Date

Customer

*Arthur B. Riddile*

Signature

Arthur B. Riddile

Printed name

Mayor

Title

November 7, 2017

Date

**Attachment A**  
**Acknowledgements**

Customer acknowledges the following:

1. **Electricity Consumption; Rates.** This agreement does not affect your ability to increase or decrease the amount of electricity you receive from the Utility. Your Bill Credit and your Monthly Payment are based on the amount of your Solar Energy produced, not your electricity consumption for any given month. If you consume less energy than the amount of your Solar Energy, your Bill Credit could be more than your electricity bill. In that case, the Utility will roll forward your Bill Credit to offset future applicable electricity charges. If you terminate your electricity service with the Utility before using all of your Bill Credits, they will expire and cannot be transferred. Your rate applicable to the Monthly Payment (see Attachment B) is independent of the rate applicable to your Bill Credit.
2. **Changes in Xcel's Cost of Electricity and Bill Credits.** Regulated utilities periodically seek increases in the rates that they charge with the Colorado Public Utilities Commission ("**PUC**"). Rate increases may change your Bill Credits. A change in rates as regulated by the PUC may increase or decrease the amount of bill credits for each ratepayer class. We have no authority with respect to changes in electricity rates charged to your ratepayer customer class. All rate changes are regulated by the Colorado PUC under Colorado law.
3. **No Savings or Production Guaranty.** Production of your Solar Energy will depend on a variety of factors beyond our control, including: curtailment; Utility delay or emergencies; weather; and, equipment performance. We do not guaranty any level of production. We also do not guaranty that your participation in the Project will result in savings, as any potential savings will depend on a variety of factors beyond our control, including: Utility rate decreases/increases; fuel pricing; weather; and equipment performance. Operator has and will have no practical ability to adjust the Project's operability or its relationship with the Utility in a way that could ensure a certain level of production or guaranty savings.
4. **Tariff; Law; Regulations.** You are familiar with your applicable tariff and with the laws and regulations that pertain to the Project, your electricity usage and to this Agreement, including C.R.S. §40-2-127, et seq., and Rule 3665, 4 CCR 723-3.

You agree that periodic changes in the amount of your Bill Credit, which may occur based on your level of electricity consumption or changes to rates and charges in Xcel's Tariffs as regulated by the Colorado PUC under Colorado Law, do not affect your obligation for the Monthly Payment. You also agree that you are responsible for your energy consumption and for assessing the impact of pricing dynamics for your meters on demand tariffs, and that your obligation for the Monthly Payment is independent of the resulting per kWh amount of your Bill Credit.

**Attachment B**  
**Contract Payment Schedule**

<b>Year</b>	<b>Estimated Production</b>	<b>Rate (\$ / kWh)</b>	<b>Estimated Blended Bill Credit Rate (\$ / kWh)</b>
1	1568652	\$0.06501	\$0.07067
2	1560809	\$0.06589	\$0.07286
3	1553005	\$0.06678	\$0.07512
4	1545240	\$0.06768	\$0.07745
5	1537513	\$0.06859	\$0.07985
6	1529826	\$0.06952	\$0.08232
7	1522177	\$0.07046	\$0.08488
8	1514566	\$0.07141	\$0.08751
9	1506993	\$0.07237	\$0.09022
10	1499458	\$0.07335	\$0.09302
11	1491961	\$0.07434	\$0.09590
12	1484501	\$0.07534	\$0.09887
13	1477078	\$0.07636	\$0.10194
14	1469693	\$0.07739	\$0.10510
15	1462344	\$0.07844	\$0.10836
16	1455033	\$0.07949	\$0.11172
17	1447758	\$0.08057	\$0.11518
18	1440519	\$0.08166	\$0.11875
19	1433316	\$0.08276	\$0.12243
20	1426150	\$0.08387	\$0.12623

**Attachment C**  
**Site Premises**

Account	Premise	Site Address	County
53-1025287-8	300007116	423 W MAIN ST REC, New Castle, CO 81647	Garfield
53-1025287-8	300049867	450 W MAIN ST TOWN, New Castle, CO 81647	Garfield
53-1025287-8	300052944	900 COUNTY ROAD 245 WTR, New Castle, CO 81647	Garfield
53-1025287-8	300062506	105 ALDER AVE PUMP, New Castle, CO 81647	Garfield
53-1025287-8	300066443	181 SHOSHONE TRL PLNT-WATER, New Castle, CO 81647	Garfield
53-1025287-8	300068554	157 W MAIN ST CITY, New Castle, CO 81647	Garfield
53-1025287-8	300082132	135 CASTLE VALLEY BLVD, New Castle, CO 81647	Garfield
53-1025287-8	300103926	1394 COUNTY ROAD 245 PUMP, New Castle, CO 81647	Garfield
53-1025287-8	300127086	299 BUCKTHORN AVE PUMP, New Castle, CO 81647	Garfield
53-1025287-8	300167612	738 1/2 BURNING MOUNTAIN AVE LIFT, New Castle, CO 81647	Garfield
53-1025287-8	300193900	298 W MAIN ST TOWN, New Castle, CO 81647	Garfield
53-1025287-8	300203075	1100 CLUBHOUSE DR PUMP, New Castle, CO 81647	Garfield
53-1025287-8	302126499	202 KAMM AVE PUMP, New Castle, CO 81647	Garfield
53-1025287-8	303911036	202 KAMM AVE MAIN, New Castle, CO 81647	Garfield
53-1025287-8	304063245	404 W MAIN ST, New Castle, CO 81647	Garfield
53-1025287-8	304077773	495 RIVER VIEW DR LIFT PMP, New Castle, CO 81647	Garfield
53-1025287-8	304194322	101 PARK DR IRRIG, New Castle, CO 81647	Garfield
53-1025287-8	304199680	801 W MAIN ST OFFICE, New Castle, CO 81647	Garfield
53-1025287-8	304576799	115 N 5TH ST, New Castle, CO 81647	Garfield
53-1025287-8	304576801	108 N 6TH ST, New Castle, CO 81647	Garfield