

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

**Docket No. 12A-1207E**

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**IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO  
ELECTRIC UTILITY COMPANY, LP FOR AN ORDER AUTHORIZING THE  
CONTINUATION OF ITS ON-SITE SOLAR PROGRAM**

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**AMENDED SETTLEMENT AGREEMENT**

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Pursuant to 4 CCR 723-1-1408, and Decision No. R13-0329-I, Black Hills/Colorado Electric Utility Company, LP (“Black Hills”), the Office of Consumer Counsel (“OCC”), Southeast Colorado Solar Coalition (“SCSC”), and Western Resource Advocates (“WRA”) referred to together as “Settling Parties”, by their undersigned counsel, and for good and valuable consideration, herewith enter into this Amended Settlement Agreement to resolve all disputes that have arisen between them, regarding all issues related to this docket.

**I. PROCEDURAL HISTORY**

1. In Recommended Decision No. R11-0502 in Docket No. 10A-805E, the Commission approved Black Hills’ 2011 RES Compliance Plan, filed on November 5, 2011, as modified by the Settlement Agreement and Recommended Decision No. R11-0502. It only applied to the RES compliance years of 2011 and 2012.”<sup>1</sup> That decision also stated that “[t]he Company’s solar program for 2013 and subsequent compliance years will be determined in future dockets, including the . . . 2013-2014 RES Compliance Plan required to be filed on or

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<sup>1</sup> Commission Decision No. R11-0502 in Docket No. 10A-805E, Sec. I., p. 14, ¶ 37.

before October 31, 2011, and the Interim RES Plan required to be filed on or before October 31, 2013.”<sup>2</sup>

2. On May 16, 2011, Black Hills filed its 2012 RES Plan in the 2011 RES Plan proceeding. The 2012 RES Plan was unopposed and approved by the Commission in Decision No. C11-1009.

3. Pursuant to Rule 3657(a)(II), Black Hills was required to file its 2013-2014 RES Compliance Plan with its 2012 Electric Resource Plan (“2012 ERP”) on or before October 31, 2011. By Decision No. C12-0413, the Commission granted Black Hills a Petition for Variance for an extension of time to file its 2012 ERP until July 30, 2012.

4. On July 30, 2012, Black Hills Energy filed its 2012 ERP Application which included the 2013-2014 RES Compliance Plan. This was Docket No. 12A-851E. In Decision No. C12-1223, the Commission dismissed, without prejudice, Black Hills’ Application for Approval of its 2012 ERP and of its 2013-2014 RES Compliance Plan filed on July 30, 2012. In that same Decision, the Commission ordered Black Hills to “file a new application addressing its electric resource plan and its renewable energy standard compliance plan on or before January 18, 2013 . . .”<sup>3</sup> In Decision No. C12-1434, the Commission extended that deadline to May 1, 2013.

5. On November 19, 2012, Black Hills filed a Verified Application and direct testimony seeking approval to continue the majority of the Company’s on-site solar program that expired December 31, 2012. Commission Decision C11-1009 only approved the Company’s 2012 RES Plan which contained an on-site solar program through the end of 2012. Since the Company had not received Commission approval to continue a RES Plan beyond 2012, the Company proposed to continue an on-site solar program for 2013 and 2014 using the

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<sup>2</sup> *Id.*

<sup>3</sup> Commission Decision No. C12-1223 in Docket No. 12A-851E, Sec. II.A., p. 18, ¶ 3.

unsubscribed capacity from its 2011 solar program and any unsubscribed capacity from its 2012 solar program. As of January 1, 2013, the Company is no longer accepting new applications for on-site solar rebates.

6. Staff, OCC, SCSC, and WRA intervened in this Docket. The parties engaged in discovery. SCSC and OCC filed answer testimony. WRA and SCSC filed cross-answer testimony. Black Hills filed rebuttal testimony.

7. Staff, OCC, SCSC, and WRA engaged in settlement discussions, and reached a settlement of all issues and filed a settlement agreement with the Commission. The ALJ held a hearing on the settlement agreement and stated she would deny the settlement agreement because of concerns regarding the use of a proxy bill credit for Black Hills' proposed community solar gardens ("CSG") program. The ALJ gave the parties the opportunity until May 3, 2013, to file an amended settlement agreement addressing her concerns.

8. This Amended Settlement Agreement memorializes the negotiated settlement among the Settling Parties on the disputed issues related to the issues raised in this docket. As a result of these negotiations and this Amended Settlement Agreement, the Settling Parties agree as set forth herein that the issues in dispute between them in this docket related to Black Hills' on-site solar program for the years 2013 and 2014 have been resolved to the satisfaction of the Settling Parties. This Amended Settlement Agreement is a fair, just and reasonable resolution of these issues.

9. The Settling Parties agree that each of them has arrived at a rationale for acceptance of this Amended Settlement Agreement and this Amended Settlement Agreement as just and reasonable for different reasons.

## II. THE AMENDED SETTLEMENT AGREEMENT

10. This section sets forth the negotiated resolution of the disputed issues between the Settling Parties. These agreements are all compromises of the filed positions of the Settling Parties, and are specifically based upon the record in this case in its entirety.

11. This Amended Settlement Agreement supersedes and replaces the Settlement Agreement that was previously filed in this docket.

12. Black Hills will roll into 2013 and 2014 the unsubscribed capacity from 2011 and 2012.

### *A. Customer-sited solar*

13. In 2013 and 2014, 583.59 kW of capacity will be used for performance based incentives (“PBI”) for customer on-site solar. The Settlement assigns 40% of the available capacity to the Small category systems (10 kW or less, customer or third-party owned) and assigns 60% of the available installation capacity to the Medium category (systems larger than 10 kW and up to 100 kW). This allocation is reflective of the average RESA collections from residential and commercial customers, respectively, during 2012. The pricing and categories for this allocation are identified in **Exhibit 1**.

14. ***Proposed changes in structure of the Solar Program.*** The Settling Parties propose several changes from the previous structure of the Program. The prior program involved two types of incentives: up-front rebates and Production Based Incentive (“PBI”) payments. The Settling Parties propose the elimination of all up-front rebates. The removal of up-front rebates allows for a greater amount of incentive capacity available to customers. To compensate customers for the elimination of the up-front rebate, the PBI payment period will be increased from the current 9-year PBI payment period with up-front rebates to a 10-year PBI payment

period. Going forward, all customers will receive annual PBI payments based on the actual production of their solar systems in a given year. Another structural change is the consolidation of the Small system category. There are currently two categories of customer-sited solar systems—those owned by individuals, and those owned by third-party developers. These will be combined to a single Small system category (10 kW or less) regardless of system owner. The current program 6 kW capacity cap for small solar for incentive payment purposes will be reduced to 5kW to allow for greater participation.

15. ***Queue position.*** The Settling Parties agree that the position of a customer, or third party solar installer, in the Company's application "queue" will be determined in the following manner: Applications must be submitted through the Company's website and will be deemed provisionally submitted as of the electronic time-stamp of that submission. To complete the submission of the application a one-line diagram and deposit check must be received by the Company at its Pueblo, Colorado offices by 3:00 p.m. on the fifth calendar day following the date of submission of the application. If this fifth calendar day falls on a Saturday, Sunday or Federal holiday, then this material must be provided by 3:00 p.m. on the next business day. These materials will be accepted by US Mail or in-person delivery at the Company's offices at 105 S. Victoria Ave, Pueblo, CO, 81003. If the one-line diagram and deposit materials are not received by the Company within this timeframe, the application will automatically be deemed rejected. Satisfaction of these requirements may be evidenced by a signed and dated return receipt for items sent by United States Mail or receipts given to persons submitting the materials in-person at Black Hills offices at the above address. In the event the deposit check is not honored, the application will automatically be deemed rejected.

16. ***Motion for Waivers.*** The Settling Parties request that the Commission grant the Motion for Waivers that Black Hills filed in this docket on November 19, 2012 seeking a partial waiver of requirements contained in Rule 3658 as specified below in order to implement this Amended Settlement Agreement. No party filed a response to the Motion for Waivers.

Specifically, Black Hills requests that the Commission continue to waive sections 3658(f)(II), 3658(f)(III) and 3658(f)(VIII) of Rule 3658 in order to continue the Commission-approved changes to the previously restructured solar program through the 2013-2014 RES compliance years addressed in this Amended Settlement Agreement. These partial waivers were first approved by the Commission for Black Hills' 2011 RES plan by Decision No. R11-0502. Subsequently, the Commission continued the waivers when it approved Black Hills' 2012 RES plan in Decision No. C11-1009.

Black Hills was granted a waiver Section 3658(f)(II) because that provision requires standard rebate offers and standard offers to purchase RECs be made available "based upon the date of contract execution." In the earlier cited decisions the Commission approved a "start date" as the date the solar application is submitted, rather than the date of contract execution. By extending the terms of the restructured solar program as proposed in this docket, the proposed start date is also the date that the solar application is submitted.

Black Hills obtained a waiver of Section 3658(f)(III) which permits applicants to take up to one year from the date of contract execution to demonstrate substantial completion of a proposed on-site solar system. The Settling Parties to the 2011 RES Plan believed this time period was too long for systems under 10kW. The one year requirement allows for applicants who may not be serious about installation to hold up the queue. Requiring that systems under 10 kW be built within 6 months, in combination with the fact that the required deposit will be

withheld if the system is not substantially completed within 6 months, provides the much needed disincentives for “gaming the system” and should keep the Company’s queue current. These concerns are still valid here.

Finally, Black Hills was granted a waiver of Section 3658(f)(VIII) because the previously approved restructured solar program did not comply with all of the provisions of this section. The Commission waived compliance with this section. While there are some differences in the capacity caps and incentive levels from those 2011 and 2012 Plans, the restructured solar program only provides PBIs on a going forward basis and contains no up-front rebates. The underlying rationale for the waiver previously granted to implement the Company’s earlier RES program framework remains unchanged. Accordingly, Black Hills requests a waiver of this section of Rule 3658.

17. In the event that 2013 unsubscribed capacity remains in any given category on the first day of 2014, a reallocation of unsubscribed capacity and associated incentive dollars may be made by Black Hills for that category’s capacity to another category that has filled its incentive capacity and for which there is continuing applicant demand.

The following table shows the remaining capacity from 2011 and 2012:

2011	2012	Total
240 kW	403 kW	643 kW

The following table shows how that capacity will be allocated in 2013 and 2014:

	2013	2014
On-site solar < 10 kW	233.4 kW	
On-site solar 10kW – 100 kW (See Exhibit 1 for how this is	350.2 kW	

allocated.)		
Community solar garden ( <i>See infra</i> § II.B.)		120 kW
Total Capacity <sup>4</sup>	583.59 kW	120 kW

***B. Community solar gardens***

18. There will be a CSG program in 2014 using 120 kW of unsubscribed capacity from the 2011 solar program. The 120 kW for the CSG program will be divided into two offerings: (1) 40 kW reserved only for residential customers and (2) 80 kW reserved for residential and/or commercial customers of which 1/8<sup>th</sup> of each CSG in this offering must be set aside for low-income residential customers (for a total set aside for low-income residential customers of 10 kW).

19. Eligibility for the low-income residential program will be based on certification by the Colorado Department of Human Services for acceptance in the Colorado Low-Income Energy Assistance Program (“LEAP”). *See* Commission Rule 3665(d)(V)(A).

20. Black Hills will use the amended contracts that are filed contemporaneously. Those are: (1) CSG Interconnection Application-agreement; (2) CSG Low Income Verification Form; (3) CSG Producer Agreement; (4) CSG Reservation Letter; (5) CSG Subscriber Agreement; (6) CSG Application Deposit Form; and (7) CSG Escrow Form. Those contracts are attached as **Exhibit 2**.

21. The structure and pricing for the net metering credit of the output of a CSG is determined as follows: Black Hills has calculated examples of CSG Monthly Bill Credits by

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<sup>4</sup> The changed PBI pricing that is in this Settlement Agreement added an additional 60 kW without requiring additional funds. This is why the 643 kW that is in this first table is different from the 703.59 kW that is in this table.



customer class, attached as Exhibit 3, following the calculation language in C.R.S. § 40-2-127(5)(b)(II) using known information when currently available and illustrative of rates based on the Black Hills' proposed rates and class revenues in the on-going Phase II rate design, Docket 12AL-1052E. The following table shows the illustrative CSG monthly bill credits.

Rate Schedule		Monthly CSG
Class	SubClass	Bill Credit
RESIDENTIAL	REGULAR	\$ 0.0922
RESIDENTIAL	NET METER	\$ 0.0870
SMALL GENERAL SERVICE	NON-DEMAND	\$ 0.1090
SMALL GENERAL SERVICE	DEMAND	\$ 0.0976
LARGE GENERAL SERVICE	SECONDARY	\$ 0.0891
LARGE GENERAL SERVICE	PRIMARY	\$ 0.0825
LARGE POWER SERVICE	SECONDARY	\$ 0.0832
LARGE POWER SERVICE	PRIMARY	\$ 0.0752
LARGE POWER SERVICE	TRANSMISSION	\$ 0.0915
IRRIGATION	PUMPING	\$ 0.1043

22. The Settling Parties seek Commission approval of the Black Hill CSG bill credit methodology, the formulas and calculations using the illustrative rates, with the understanding that the final rates will be based upon the final PUC decision issued in Docket 12AL-1052E. The final rates will be input into the CSG Bill Credit calculation model as well as other updates necessary to develop the final 2014 Monthly Bill Credits for each customer class. Black Hills will file CSG compliance tariffs and 2014 CSG bill credits with the Commission by November 1, 2013 for CSG bill credits effective January 1, 2014. Black Hills will file no later than November 15<sup>th</sup> of each year its proposed CSG Bill Credits for each Rate Schedule to be in effect on January 1<sup>st</sup> of the subsequent year.

### III. GENERAL TERMS AND CONDITIONS

23. Through active prehearing investigation and negotiations, the Settling Parties have negotiated agreements set forth in this Amended Settlement Agreement, resolving the

enumerated contested and disputed issues in this docket in a manner which the Settling Parties agree is just and reasonable and in the public interest. This Amended Settlement Agreement reflects the compromise and Amended Settlement Agreement of those disputed issues between the Settling Parties in this docket. The Settling Parties further agree that reaching agreement by means of negotiations, rather than through litigation, is in the public interest.

24. The Settling Parties agree to present, to support, and to defend this Amended Settlement Agreement before the Commission and in the courts. They further agree to present testimony and exhibits in the evidentiary hearing in this docket, or in a separate hearing set for the purpose of obtaining the Commission's approval of this Amended Settlement Agreement. In the event the Commission rejects this Amended Settlement Agreement on a certain issue, the Settling Parties agree that any Settling Party as to that issue may request a hearing on this issue and must file written notice of the issue on which a hearing is requested and a motion requesting a hearing. The written notice and motion must be filed with the Commission within five (5) calendar days of the effective date of the Commission's decision rejecting the Amended Settlement Agreement on that certain issue. If the Commission schedules a hearing on the rejected issue, the Settling Parties agree that they may cross-examine each other's witnesses on the issue rejected by the Commission.

25. Approval by the Commission of this Amended Settlement Agreement shall constitute a determination that the Amended Settlement Agreement represents a just, equitable and reasonable resolution of the disputed issues resolved herein.

26. The Settling Parties specifically agree and understand that this Amended Settlement Agreement represents a negotiated settlement that is in the public interest with respect to the various matters and issues enumerated therein, for the sole purpose of the Amended

Settlement Agreement of the matters agreed to in this Amended Settlement Agreement. The Settling Parties shall not be deemed to have approved, accepted, agreed to, or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for in this Amended Settlement Agreement, other than as specifically provided for herein.

Notwithstanding the resolution of the issues set forth in this Amended Settlement Agreement, none of the methods or principles herein contained shall be deemed by the Settling Parties to constitute a settled practice or precedent in any future proceeding.

27. This Amended Settlement Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. The parties are relying on no other statement or representation other than those contained herein.

28. This Amended Settlement Agreement may be executed in counterparts and by facsimile or electronic copies of signatures, all of which when taken together shall constitute the entire Amended Settlement Agreement with respect to the matters addressed herein.

#### **IV. CONCLUSION**


29. For the reasons stated above, the Settling Parties respectfully request that the Commission enter an order approving this Amended Settlement Agreement, with the finding that the Commission's approval of this Amended Settlement Agreement represents a fair, just, and reasonable resolution of any and all disputes in this docket as to those issues.

Date: April 25, 2013

Approved as to form:

BLACK HILLS/COLORADO  
ELECTRIC UTILITY COMPANY,  
LP:

By:



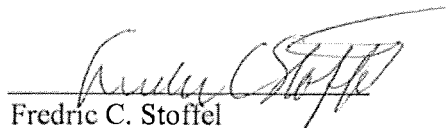
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Corporate Counsel  
Black Hills Corporation  
1515 Wynkoop Street, Suite 500  
Denver, CO 80202  
Telephone: 303-566-3455  
Email: [kevin.opp@blackhillscorp.com](mailto:kevin.opp@blackhillscorp.com)

Attorney for Black Hills/Colorado Electric  
Utility Company, LP

Agreed on behalf of:

BLACK HILLS/COLORADO ELECTRIC  
UTILITY COMPANY, LP:

By:



Fredric C. Stoffel  
Director of Regulatory Services  
Black Hills Corporation  
1515 Wynkoop, Suite 500  
Denver, CO 80202

Approved as to form:

OFFICE OF THE ATTORNEY GENERAL

By: 

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Agreed on behalf of:

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COUNSEL:

By: 

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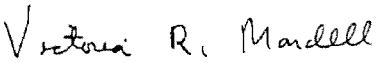
Attorney for the Office of Consumer Counsel


Approved as to form:

Agreed on behalf of:

WESTERN RESOURCE ADVOCATES:

WESTERN RESOURCE ADVOCATES:

By:   
\_\_\_\_\_  
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Agreed on behalf of:

SOUTHEAST COLORADO SOLAR  
COALITION;

By:



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Attorney for Southeast Colorado Solar Coalition

Cost of 2013 Solar Program - Carryover of 2011 unreserved capacity less 120 kW for Community Solar Garden in 2014 plus Unsubscribed 2012 Capacity

## Settlement Proposal

		2013 Farm electric delivered kWh:		2013 Framework Annual kWh at 1565/kW	2013 Framework Rebate/Watt	2013 Framework PBI rate	2013 Costs - rebates	2014 Costs - PBI	2015 Costs - PBI	2016 Costs - PBI	2017 Costs - PBI	2018 Costs - PBI	2019 Costs - PBI	2020 Costs - PBI	2021 Costs - PBI	2022 Costs - PBI	2023 Costs - PBI	Full Term Costs
NOT USED		0.0	0	\$ -	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$0
Small Solar Category	5 KW Cap	233.4	365,330	\$ -	-	\$ 0.1267	\$ -	\$ 46,287	\$ 46,287	\$ 46,287	\$ 46,287	\$ 46,287	\$ 46,287	\$ 46,287	\$ 46,287	\$ 46,287	\$ 46,287	\$462,873
NOT USED		0.0	0	\$ -	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$0
NOT USED		0.0	0	\$ -	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$0
Medium Solar Category	10-30kW	130.2	203,695	\$ -	-	\$ 0.1600	\$ -	\$ 32,591	\$ 32,591	\$ 32,591	\$ 32,591	\$ 32,591	\$ 32,591	\$ 32,591	\$ 32,591	\$ 32,591	\$ 32,591	\$325,912
Medium Solar Category	30-60kW	120.0	187,800	\$ -	-	\$ 0.1600	\$ -	\$ 30,048	\$ 30,048	\$ 30,048	\$ 30,048	\$ 30,048	\$ 30,048	\$ 30,048	\$ 30,048	\$ 30,048	\$ 30,048	\$300,480
Medium Solar Category	60-100kW	100.0	156,500	\$ -	-	\$ 0.1600	\$ -	\$ 25,040	\$ 25,040	\$ 25,040	\$ 25,040	\$ 25,040	\$ 25,040	\$ 25,040	\$ 25,040	\$ 25,040	\$ 25,040	\$250,400
Total Capacity Additions		583.6	913,325				\$ -	\$ 133,966	\$ 133,966	\$ 133,966	\$ 133,966	\$ 133,966	\$ 133,966	\$ 133,966	\$ 133,966	\$ 133,966	\$ 133,966	\$1,339,665
Assumed Interest Expense																		
WACC=		8.53%	\$ -	\$ -	\$ -	\$ 11,427	\$ -	\$ 22,855	\$ 34,282	\$ 45,709	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$114,273
TOTAL COSTS TO RESA FUNDS				\$ -	\$ -	\$ 145,394	\$ 156,821	\$ 168,248	\$ 179,676	\$ 133,966	\$ 133,966	\$ 133,966	\$ 133,966	\$ 133,966	\$ 133,966	\$ 133,966	\$ 133,966	\$1,453,938
TOTAL REC'S ACQUIRED FULL TERM																		
Annual Production (PVWatts)		1565																18,266
																		Cost per REC'S ACQUIRED \$ 79.60
																		Cost per REC before interest: \$ 73.34



TABLE 1				<u>Original BHE Proposal</u>		
	2011	2012	Total 2011/2012		2013	2014
Unsubscribed Capacity	240.0	403.0	643.0			
				On-Site Solar < 10 kW	261.0	
				On-Site Solar 10 kW-100 kW	262.0	
				Community Solar Garden		120.0
Total Capacity	<u>240.0</u>	<u>403.0</u>	<u>643.0</u>	Total Capacity	<u>523.0</u>	<u>120.0</u>
					643.0	Tot

<u>Settlement Proposal</u>		
	2013	2014
	233.4	
	350.2	
		120.0
al Capacity	583.6	120.0
		703.6

CSG INTERCONNECTION APPLICATION-AGREEMENT (100 kW OR LESS)

**COMMUNITY SOLAR GARDEN PROGRAM  
INTERCONNECTION APPLICATION / AGREEMENT  
FOR PARALLEL GENERATION SERVICE  
(WITH CAPACITY OF 100 kW OR LESS)**



**Solar Garden ID No.:** \_\_\_\_\_

**Customer – Generator**

- The Interconnection Application / Agreement is between Black Hills/Colorado Electric Utilities LP., d/b/a Black Hills Energy, hereinafter referred to as “Company” and the Customer – Generator herein described in the Application / Agreement. Black Hills Energy and the Customer – Generator are referenced in this Application / Agreement collectively as the “Parties” and individually as a “Party.”
- If you are assuming ownership or operational control of an existing system and no changes are being made to the existing Customer-Generator system, complete Sections A, D, and F of this Application / Agreement and forward to the Company.
- If you are a new Customer – Generator applicant, complete Sections, A, B, C & D of this Application / Agreement and forward to the Company.
- NOTE: This Interconnection Application / Agreement for Parallel Generation Service is intended for use with photovoltaic solar generation systems (“PV Systems”) with a capacity of 100 kW or less, installed in the Black Hills Energy Community Solar Garden Program. This Interconnection Agreement can be used for PV Systems with a capacity greater than 100 kW (up to 500 kW), with certain modifications as noted.

**Forward the Application / Agreement to:**

Black Hills Energy  
Attn: Renewable Energy Manager  
105 South Victoria Avenue  
Pueblo CO, 81003

Exhibit CB-1  
Appendix B

CSG INTERCONNECTION APPLICATION-AGREEMENT (100 kW OR LESS)

**COMMUNITY SOLAR GARDEN PROGRAM  
INTERCONNECTION APPLICATION / AGREEMENT  
FOR PARALLEL GENERATION SERVICE  
(WITH CAPACITY OF 100 kW OR LESS)**

CSG INTERCONNECTION APPLICATION-AGREEMENT (100 kW OR LESS)

**COMMUNITY SOLAR GARDEN PROGRAM  
INTERCONNECTION APPLICATION / AGREEMENT  
FOR PARALLEL GENERATION SERVICE  
(WITH CAPACITY OF 100 kW OR LESS)**

**A. Customer-Generator's Information**

Name:

Mailing Address:

City: State: CO Zip Code:

Service/Street Address (if different from above):

City: State: CO Zip Code:

Daytime Phone: 719 E-Mail:

Emergency Contact Phone:

Company Account No. (from Utility Bill):

**B. Customer-Generator's System Information**

Manufacturer Name Plate (if applicable) AC Power Rating: \_\_\_\_ kW Voltage: \_\_\_\_ Volts

System Type: Solar \_\_ Wind \_\_ Biomass \_\_ Fuel Cell \_\_ Other (describe) \_\_\_\_\_

Service/Street Address: \_\_\_\_\_

Inverter/Interconnection Equipment Manufacturer: \_\_\_\_\_

Inverter/Interconnection Equipment Model No.: \_\_\_\_\_

Are Required System Plans & Specifications Attached? Yes\_\_ No \_\_

Inverter/Interconnection Equipment Location (describe): \_\_\_\_\_

Outdoor Manual/Utility Accessible & Lockable Disconnect Switch Location (describe): \_\_\_\_\_

Existing Electrical Service Capacity: \_\_\_\_\_ Amperes Voltage: \_\_\_\_\_ Volts

Service Character: Single Phase \_\_ Three Phase \_\_

**C. Installation Information/Hardware and Installation Compliance**

Person or Company Installing: \_\_\_\_\_

Contractor's License No. (if applicable): \_\_\_\_\_

Approximate Installation Date: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

CSG INTERCONNECTION APPLICATION-AGREEMENT (100 kW OR LESS)

**COMMUNITY SOLAR GARDEN PROGRAM  
INTERCONNECTION APPLICATION / AGREEMENT  
FOR PARALLEL GENERATION SERVICE  
(WITH CAPACITY OF 100 kW OR LESS)**

Daytime Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Person or Agency Who Will Inspect/Certify Installation: \_\_\_\_\_

The Customer-Generator's proposed System hardware complies with all applicable National Electrical Safety Code (NESC), National Electric Code ("NEC"), Institute of Electrical and Electronics Engineers ("IEEE") and Underwriters Laboratories ("UL") requirements for electrical equipment and their installation. As applicable to System type, these requirements include, but are not limited to, IEEE 929-2000; and **UL 1741 Standard for Safety for Inverters, Converters, Controllers and Interconnection System Equipment for Use with Distributed Energy Resources, 1<sup>st</sup> Ed.**

The proposed installation complies with all applicable local electrical codes and all reasonable safety requirements of Company. The proposed System has a lockable, visible disconnect device, accessible at all times to Company personnel. The System is only required to include one lockable, visible disconnect device, accessible to Company. If the interconnection equipment is equipped with a visible, lockable, and accessible disconnect, no redundant device is needed to meet this requirement.

The Customer-Generator's proposed System has functioning controls to prevent voltage flicker, DC injection, overvoltage, undervoltage, overfrequency, underfrequency, and overcurrent, and to provide for System synchronization to Company's electrical system. The proposed System does have an anti-islanding function that prevents the generator from continuing to supply power when Company's electric system is not energized or operating normally. If the proposed System is designed to provide uninterruptible power to critical loads, either through energy storage or back-up generation, the proposed System includes a parallel blocking scheme for this backup source that prevents any backflow of power to Company's electrical system when the electrical system is not energized or not operating normally. An AC disconnect device must be installed prior to interconnection.

Signed (Installer): \_\_\_\_\_ Date: \_\_\_\_\_

Name (Print): \_\_\_\_\_

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**D. Additional Terms and Conditions**

In consideration of the premises and mutual covenants set forth herein, the Customer – Generator and the Company agree to the provisions set forth in this Agreement.

In addition to abiding by Company's other applicable rules and regulations and by applicable rules in the Code of Colorado Regulations, the Customer-Generator understands and agrees to the following specific terms and conditions:

**1) Operation/Disconnection.**

If it appears to Company, at any time, in the reasonable exercise of its judgment, that operation of the Customer-Generator's System is adversely affecting safety, power quality or reliability of Company's electrical system, Company may immediately disconnect and lock-out the Customer-Generator's System from Company's electrical system. The Customer-Generator shall permit Company's employees and inspector's reasonable access to inspect, test, and examine the Customer-Generator's System. The Customer-Generator's System shall not be reconnected to Company's electrical system by the customer generator until the Customer-Generator's System is repaired and operating in a normal and safe manner.

**2) Insurance and Limitation of Liability.**

The Customer-Generator agrees to carry no less than \$300,000 of liability insurance that provides for coverage of all risk of liability for personal injuries (including death) and damage to property arising out of or caused by the operation of the Customer-Generator's System. Insurance may be in the form of an existing policy or an endorsement on an existing policy.

[For PV Systems with a capacity greater than 10 kW and up to 500 kW, the following clause must be substituted in lieu of the foregoing clause: "The Customer-Generator at its own expense shall secure and maintain in effect during the term of the agreement liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 for each occurrence."]

Each party's liability to the other party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either party be liable to the other party for any indirect, incidental, special, consequential, or punitive damages of any kind whatsoever, except as allowed under the Indemnification section of this Agreement.

**3) Interconnection Costs.**

The Customer-Generator shall, at the Customer-Generator's cost and expense, install, operate, maintain, repair, and inspect, and shall be fully responsible for the Customer-Generator's System. The Customer-Generator further agrees to pay or reimburse to

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Company all of Company's Interconnection Costs. Interconnection Costs are the reasonable costs incurred by Company for: (1) additional tests or analyses of the effects of the operation of the Customer-Generator's System on Company's local distribution system, (2) additional metering, and (3) any necessary controls. These Interconnection Costs must be related to the installation of the physical facilities necessary to permit interconnected operation of the Customer-Generator's System with Company's system and shall only include those costs, or corresponding costs, which would not have been incurred by Company in providing service to the Customer-Generator solely as a consumer of electric energy from Company pursuant to Company's standard cost of service policies in effect at the time the Customer-Generator's System is first interconnected with Company's system. Upon request, Company shall provide the Customer-Generator with a non-binding estimate of Company's Interconnection Costs based upon the plans and specifications provided by the Customer-Generator to Company.

**4) Energy Pricing and Billing.**

The company's Rate Tariff CG-SPP1 is on file with the Colorado Public Utilities Commission ("Commission") and it describes the valuation and billing of electric energy provided by Company to the Customer-Generator. The value of the electric energy delivered to the Customer-Generator shall be billed in accordance with rate schedule(s) under which the Customer-Generator was being served prior to installation of the generator, as updated or changed from time to time as approved by the Commission. The prices for Photovoltaic Energy and associated Renewable Energy Credits delivered by the Customer-Generator to Company shall be credited in accordance with the effective rates established in Rate Schedule CSG of the Company's Colorado electric tariff on file with the Commission.

**5) Terms and Termination Rights.**

This Agreement becomes effective when signed by both the Customer-Generator and Company, and shall continue in effect until terminated. After fulfillment of any applicable initial tariff or rate schedule term, the Customer-Generator may terminate this Agreement at any time by giving Company at least thirty (30) days prior written notice. In such event, the Customer-Generator shall, no later than the date of termination of Agreement, completely disconnect the Customer-Generator's System from parallel operation with Company's system. Either party may terminate this Agreement by giving the other party at least thirty (30) days prior written notice that the other party is in default of any of the terms and conditions of this Agreement, so long as the notice specifies the basis for termination, and there is an opportunity to cure the default. This Agreement may also be terminated at any time by mutual agreement of the Customer-Generator and Company. This agreement may also be terminated, by approval of the Commission, if there is a change in statute or regulations that is determined to be applicable to this contract and necessitates its termination.

**6) Transfer of Ownership.**



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If operational control of the Customer-Generator's System transfers to any other party than the Customer-Generator, a new Application/Agreement must be completed by the person or persons taking over operational control of the existing Customer-Generator System. Company shall be notified no less than thirty (30) days before the Customer-Generator anticipates transfer of operational control of the Customer-Generator's System. The person or persons taking over operational control of Customer-Generator's System must file a new Application/Agreement, and must receive authorization from Company, before the existing Customer-Generator System can remain interconnected with Company's electrical system. The new Application/Agreement will only need to be completed to the extent necessary to affirm that the new person or persons having operational control of the existing Customer-Generator System completely understand the provisions of this Application/Agreement and agrees to them. If no changes are being made to the Customer-Generator's System, completing sections A, D and F of this Application/Agreement will satisfy this requirement. If no changes are being proposed to the Customer-Generator System, Company will assess no charges or fees for this transfer. Company will review the new Application/Agreement and shall approve such, within fifteen (15) days if the new Customer-Generator has satisfactorily completed the Application/Agreement, and no changes are being proposed to the existing Customer-Generator System. Company will then complete section G and forward a copy of the completed Application/Agreement back to the new Customer-Generator, thereby notifying the new Customer-Generator that the new Customer-Generator is authorized to operate the existing Customer-Generator System in parallel with Company's electrical system. If any changes are planned to be made to the existing Customer-Generator System that in any way may degrade or significantly alter that System's output characteristics, then the Customer-Generator shall submit to Company a new Application/Agreement for the entire Customer-Generator System and all portions of the Application/Agreement must be completed.

**7) Assignment.**

Neither Party may assign or transfer this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided, however*, that either Party may assign this Agreement, without the consent of the other Party, to (a) any Affiliate of the assigning Party, (b) any entity in which or with which the assigning Party is merged or consolidated, (c) any entity acquiring all or a substantial part of the assets of the assigning Party, or (d) any entity to which the Assigning Party has assigned, transferred or pledged rights or interests under this Agreement for mortgage or otherwise as security for indebtedness.

**8) Dispute Resolution.**

If any disagreements between the Customer-Generator and Company arise that cannot be resolved through normal negotiations between them, either party may bring the disagreements to the Commission through an informal or formal complaint process, as

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provided by the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, in effect at the time the complaint process is invoked.

**9) Separate Agreement.**

This Interconnection Agreement is a separate and free-standing contract and shall be interpreted independently of the respective obligations of Black Hills Energy and the Customer-Generator (as a Community Solar Gardens Producer) under a Community Solar Gardens Agreement entered into between them. Notwithstanding any other provision in this Agreement, nothing in this Interconnection Agreement shall alter or modify the Customer-Generator's or Black Hills Energy's rights, duties and obligations under the Community Solar Gardens Agreement.

**10) Entire Agreement.**

This Application / Agreement contains the entire agreement of the Parties relating to the terms and conditions by which Customer-Generator may interconnect and operate its Photovoltaic Generating System in parallel with the Company's electric distribution system at a Solar Garden Site, and supersedes any and all prior agreements, written or oral, between them relating to the subject matter hereof. This Agreement cannot be extended, modified or amended unless agreed to in writing by each party. This Agreement is subject to the Company's effective tariffs on file with the Commission and to any applicable final Orders of the Commission.

**11) Notices.**

All notices, demands or consents required or permitted under this Agreement will be in writing and will be sent by facsimile, certified mail return receipt requested, by hand delivery, or nationally recognized overnight courier to the respective Parties at the addresses set forth above.

**12) Governing Law.**

This Agreement shall be governed by and interpreted in accordance with the laws of the state of Colorado.

**13) Counterparts.**

This Agreement may be executed in counterparts, each of which taken together shall constitute a single agreement.

I have read, understand, agree, and accept the provisions of this Application / Agreement.

Signed (Customer-Generator): \_\_\_\_\_ Date: \_\_\_\_\_

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**E. Electrical Inspection**

The Customer-Generator System referenced above satisfies all requirements noted in Section C.

Inspector Name (print): \_\_\_\_\_

Inspector Certification: I am a Licensed Engineer in Colorado \_\_\_\_ or I am a Licensed Electrician in Colorado \_\_\_\_ License No. \_\_\_\_\_

Signed (Inspector): \_\_\_\_\_ Date: \_\_\_\_\_

**F. Customer-Generator Acknowledgement**

I am aware of the Customer-Generator System installed on my premises and I have been given warranty information and/or an operational manual for that system. Also, I have been provided with a copy of Company's parallel generation tariff or rate schedule (as applicable) and interconnection requirements. I am familiar with the operation of the Customer-Generator System.

I agree to abide by the terms of this Application/Agreement, and I agree to operate and maintain the Customer-Generator System in accordance with the manufacturer's recommended practices as well as Company's interconnection standards. If, at any time and for any reason, I believe that the Customer-Generator System is operating in an unusual manner that may result in any disturbances on Company's electrical system, I shall disconnect the Customer-Generator System and not reconnect it to Company's electrical system until the Customer-Generator System is operating normally after repair or inspection. Further, I agree to notify Company no less than thirty (30) days prior to modification of the components or design of the Customer-Generator System that in any way may degrade or significantly alter that System's output characteristics. I acknowledge that any such modifications will require submission of a new Application/Agreement to Company.

I agree not to operate the Customer-Generator System in parallel with Company's electrical system until Company has approved this Application/Agreement.

Signed (Customer-Generator): \_\_\_\_\_ Date: \_\_\_\_\_

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**G. Utility Application Approval (*to be completed by Company*)**

Company does not, by approval of this Application/Agreement, assume any responsibility or liability for damage to property or physical injury to persons due to malfunction of the Customer-Generator's System or the Customer-Generator's negligence.

Company approves this Application on this \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year).

Company Representative Name (print): \_\_\_\_\_

Signed Company Representative: \_\_\_\_\_

CSG Low Income Verification Form



## Low Income Verification Form

The purpose of this form is to verify the Black Hills Energy customer stated below is an active participant in the representing organization (shown below). This form is required for acceptance of low income customers into Black Hills Energy Community Solar Gardens Program. Low income customers must have an income level that is at or below 185% of the Federal Poverty level.

### **Black Hills Energy Customer Information**

**Customer Name:**

**Customer Account Number:**

**Customer Premise Number:**

**Customer Address: Customer City, State, Zip:**

**Solar Garden ID:**

The customer stated above is an active participant of the program listed below and they meet the 185 percent of Federal poverty requirement as verified by:

Name (printed) \_\_\_\_\_

\*Signature \_\_\_\_\_

\*A legal representative of the following organization

Representing organization name \_\_\_\_\_

## CSG Low Income Verification Form

This form must be completed and uploaded for each low income subscriber to a solar garden.



## Amended CSG Producer Agreement

Solar Garden ID No.: \_\_\_\_\_

### Community Solar Gardens Agreement Community Solar Gardens Photovoltaic (PV) Systems For CSG Producers

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Black Hills/Colorado Electric Utility Company LLC d/b/a Black Hills Energy (“Black Hills Energy” or “Company”), a Delaware limited partnership, with a principal place of business at 105 South Victoria Avenue, Pueblo, CO 81003, and \_\_\_\_\_ (“CSG Producer”), a \_\_\_\_\_, whose business address is \_\_\_\_\_, each of which may be referred to herein individually as a “Party” or collectively as the “Parties.”

#### RECITALS:

This Agreement governs the relationship between Black Hills Energy and CSG Producer, both on behalf of itself and as authorized agent for CSG Subscribers (as defined in Section 1.18 below) and the PV System Owner (as defined in Section 1.12 below), with respect to the Photovoltaic Energy and associated Renewable Energy Credits (“RECs”) generated by the community solar garden photovoltaic solar system (the “PV System”) installed, or to be installed, at the location described in Exhibit A attached hereto, with a rated Direct Current (“DC”) nameplate capacity of \_\_\_\_\_ kW.

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

#### ARTICLE I DEFINITIONS

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

- 1.1. “Commission” shall mean the Public Utilities Commission of the State of Colorado.
- 1.2. “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.2 hereof.
- 1.3. “Electric Tariffs” shall mean Black Hills Energy’s electric tariffs as in effect and on file with the Commission from time to time.

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

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

1.6. “Interconnection Agreement” shall mean the separate agreement to be entered into between CSG Producer and Black Hills Energy providing the terms and conditions by which CSG Producer may interconnect and operate the PV System in parallel with Black Hills Energy’s electric distribution system at the Solar Garden Site.

1.7. “Monthly Subscription Information” shall mean the information timely provided to Black Hills Energy or changed by CSG Producer via written notice to Black Hills Energy (or through the CSG Application System when it is technically feasible to provide such data through that system), pursuant to Section 4.6 hereof, setting forth the names of the CSG Subscribers holding Subscriptions in the PV System, each such CSG Subscriber’s identifying information, and the CSG Allocation applicable to each such CSG Subscriber’s Subscription, reflecting each CSG Subscriber’s allocable portion of Photovoltaic Energy generated by the PV System during a particular Production Month.

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

1.9 “Production Meter” shall mean the measuring facility installed by Black Hills Energy pursuant to Section 5.1 hereof to measure the Photovoltaic Energy produced by the PV System at the point where the Photovoltaic Energy changes possession from CSG Producer to Black Hills Energy.

1.10. “Production Month” shall mean the calendar month during which Photovoltaic Energy is produced by the PV System and delivered to Black Hills Energy at the Production Meter.

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

1.12. “PV System Owner” shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the PV System. If the PV System Owner is the same entity as CSG Producer, then Section 3.2 hereof shall not be applicable.



1.13. “Renewable Energy Credit” or “REC” shall have the meaning set forth in Rule 3652(t), 4 *Code of Colorado Regulations* 723-3, and means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of capacity and/or electric energy generated from an Eligible Energy Resource, including any and all environmental air quality credits, benefits, emissions reductions, off-sets, allowances, or other benefits as may be created or under any existing or future statutory or regulatory scheme (federal, state, or local) by virtue of or due to the PV System’s actual energy production or the PV System’s energy production capability because of the PV System’s environmental or renewable characteristics or attributes. For the avoidance of doubt, a “REC” excludes (i) any local, state or federal production tax credit, depreciation deductions or other tax credits providing a tax benefit to CSG Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, including the investment tax credit expected to be available to CSG Producer or the owner of the PV System with respect to the PV System under Internal Revenue Code Section 48 (Energy Credits); (ii) any direct governmental grant or payment inuring to the benefit of CSG Producer or the owner of the PV System based on ownership of, or energy production from, any portion of the PV System, pursuant to Section 1603 of the American Recovery and Reinvestment Act, or other federal or state legislation; and (iii) depreciation and other tax benefits arising from ownership or operation of the PV System unrelated to its status as a generator of renewable or environmentally clean energy. One REC results from one megawatt-hour of electric energy generated from an eligible energy resource.

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

1.15. “Community Solar Gardens Application System” or “CSG Application System” is the interactive, internet website-based interface maintained by Black Hills Energy through which CSG Producer may establish qualification and provide information and complete documents necessary for acceptance in Black Hills’ Community Solar Gardens Program.

1.16. “CSG Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the PV System, applicable to each CSG Subscriber’s Subscription reflecting such CSG Subscriber’s allocable portion of Photovoltaic Energy produced by the PV System in a particular Production Month. In accordance with Section 4.6 below, the CSG Producer is required to provide the CSG Allocation to Black Hills Energy on a monthly basis in writing (or through the CSG Application System when it is technically feasible to provide such data through that system), which Black Hills Energy will in turn use to calculate the CSG Credit for each billing month.

1.17. “CSG Credit” shall mean the dollar amount paid by Black Hills Energy to each CSG Subscriber as a credit on the CSG Subscriber’s retail electric service bill to compensate the CSG Subscriber for its beneficial share of Photovoltaic Energy produced by the PV System and

delivered to Black Hills Energy from the CSG Producer, in accordance with Rate Schedule CSG of Black Hills Energy's Electric Tariffs.

1.18. "CSG Subscriber" shall mean the retail electric service customer of Black Hills Energy who: (a) owns a beneficial share of the Photovoltaic Energy produced by the PV System pursuant to a Subscription; (b) has attributed such Subscription to one or more premises served by Black Hills Energy where it is the customer of record; and (c) has entered into a CSG Subscriber Agency Agreement with CSG Producer.

1.19. "CSG Subscriber Agency Agreement" shall mean an agreement entered into between each CSG Subscriber and CSG Producer, in a form substantially the same as the CSG Subscriber Agency Agreement attached hereto as Exhibit B, by and through which each CSG Subscriber has authorized CSG Producer to act as CSG Subscriber's agent for purposes of this Agreement, including, among other things, to sell CSG Subscriber's beneficial share of Photovoltaic Energy generated by the PV System to Black Hills Energy.

1.20. "Subscription" shall mean a proportional interest owned or held by a particular CSG Subscriber in the PV System within the meaning of Colo. Rev. Stat. § 40-2-127(2)(b)(III), which meets all of the requirements set forth in Section 3.3 below.

## **ARTICLE II**

### **TRANSFER OF PHOTOVOLTAIC ENERGY AND ASSOCIATED RECS**

2.1 Sale and Delivery of Subscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, CSG Producer shall sell and deliver to Black Hills Energy at the Production Meter all of the Photovoltaic Energy produced by the PV System and attributable to Subscriptions held by all CSG Subscribers in the PV System.

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

(b) For purposes of applying the CSG Credit to CSG Subscribers' bills, Black Hills Energy shall be entitled to rely exclusively on the Monthly Subscription Information as timely provided to Black Hills Energy on a monthly basis in writing (or through the CSG Application System when it is technically feasible to provide such data through that system), in accordance with the procedures set forth in Section 4.6 below. The correction of previously-applied CSG Credits among CSG Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to the Photovoltaic Energy produced by the PV System shall be the full responsibility of the CSG Producer.

2.2 Purchase and Sale of RECs Associated with Subscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, CSG Producer agrees to sell and Black Hills Energy agrees to purchase all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Black Hills Energy at the Production Meter attributable to Subscriptions held by all CSG Subscribers, based upon the Monthly Subscription Information applicable to each Production Month. The price to be paid by Black Hills Energy for the purchase of such RECs hereunder shall be expressed in dollars per megawatt-hour ("MWh"), with one REC being generated for each MWh of power generated by the PV System. Black Hills Energy shall pay CSG Producer the price of \_\_\_\_\_ per MWh for RECs purchased pursuant to this section and Rate Schedule CSG of Black Hills Energy's Colorado electric tariff. Payments for such purchases shall be made monthly by check to CSG Producer for the RECs associated with the subscribed portion of Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month. Such REC payment shall be made within thirty (30) days of the applicable meter reading.

2.3 Purchase and Sale of Unsubscribed Photovoltaic Energy and Associated RECs. Effective upon the Date of Commercial Operation, CSG Producer agrees to sell and Black Hills Energy agrees to purchase all of the Photovoltaic Energy and associated RECs produced by the PV System and delivered to Black Hills Energy at the Production Meter not attributable to a Subscription held by any CSG Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Black Hills Energy shall pay CSG Producer a price per kWh for the Photovoltaic Energy and associated RECs purchased pursuant to this section at the then-currently effective rates established in Rate Schedule CSG of Black Hills Energy's Colorado electric tariff. Payments for such purchases shall be made monthly by check to CSG Producer for the unsubscribed portion of the Photovoltaic Energy recorded at the Production Meter during the immediately preceding Production Month and the RECs associated therewith. Such payment shall be made within thirty (30) days of the applicable meter reading.

2.4 Title, Risk of Loss, and Warranty of Title. As between the Parties, CSG Producer shall be deemed to be in control of the Photovoltaic Energy output from the PV System up to and until delivery and receipt by Black Hills Energy at the Production Meter and Black Hills Energy shall be deemed to be in control of such energy from and after delivery and receipt at such Production Meter. Title and risk of loss related to the Photovoltaic Energy and all associated RECs shall transfer to Black Hills Energy at the Production Meter. CSG Producer warrants and represents to Black Hills Energy that it has or will have at the time of delivery good and sufficient title to all Photovoltaic Energy output and/or the ability to transfer good and sufficient title of same to Black Hills Energy. CSG Producer warrants and represents to Black Hills Energy that it has or will have at the time of delivery good and sufficient title to all RECs associated with such Photovoltaic Energy output and/or the ability to transfer good and sufficient title of all such RECs to Black Hills Energy.

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

### **ARTICLE III**

#### **REPRESENTATIONS OF THE PARTIES AND CONDITIONS PRECEDENT**

3.1 CSG Producer represents and warrants as follows:

(a) CSG Producer is either the PV System Owner or is a subscriber organization organized under Colo. Rev. Stat. § 40-2-127, and has been duly authorized by the PV System Owner to beneficially operate the PV System and to issue subscriptions in the PV System to CSG Subscribers.

(b) CSG Producer has been duly authorized to sell and to deliver to Black Hills Energy Photovoltaic Energy produced by the PV System on behalf of all CSG Subscribers having valid Subscriptions in the PV System, the purchase price and full consideration for which are the CSG Credits to be applied on the CSG Subscribers' electric service bills in accordance with Rate Schedule CSG of Black Hills Energy's Electric Tariffs.

(c) CSG Producer has the right and authority to sell the unsubscribed Photovoltaic Energy produced by the PV System to Black Hills Energy on behalf of the PV System Owner, the CSG Subscribers and itself.

(d) CSG Producer has the right and authority to sell all of the RECs associated with the Photovoltaic Energy produced by the PV System and delivered to Black Hills Energy at the Production Meter.

3.2 If the PV System Owner and the CSG Producer are not the same person, then the undersigned PV System Owner hereby agrees and consents to the terms of this Agreement and hereby authorizes CSG Producer to perform any and all acts necessary on its behalf to carry out the duties, responsibilities and obligations provided for herein as CSG Producer, and to sell on the PV System Owner's behalf any and all of PV System Owner's interest in the Photovoltaic Energy and associated RECs produced by the PV System to Black Hills Energy in accordance with the terms hereof.

3.3 Requirements and Restrictions Applicable to CSG Subscribers and Subscriptions. The conditions set forth in the following subparagraphs (a) through (f) of this Section 3.3 must be satisfied at all times during the Term of this Agreement, except as specifically provided otherwise below. Black Hills Energy reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non-compliance with any of such conditions. For purposes of this Agreement, the CSG Allocation for any CSG Subscriber or Subscription that no longer satisfies the below conditions for qualification as a valid CSG Subscriber or Subscription shall be treated as an unsubscribed portion, and the Monthly Subscription Information automatically changed accordingly, unless and until such CSG Allocation is changed by CSG Producer in a manner that satisfies all such conditions.

(a) No CSG Subscriber may own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy generated by the PV System.

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

(c) Unless the CSG Subscriber is an eligible low-income customer, as defined in Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, each Subscription shall be sized to represent at least one kW of the PV System's nameplate rating and to supply no more than 120 percent of the CSG Subscriber's average annual electricity consumption at the premises to which the Subscription is attributed (based on the annual estimated generation of the PV System as determined via PVWATTS, a performance calculator developed by researchers at the National Renewable Energy Laboratory to permit non-experts to obtain performance estimates quickly for grid-connected PV systems), reduced by the amount of any existing retail renewable distributed generation at such premises. The minimum one kW sizing requirement herein shall not apply to Subscriptions owned by an eligible low-income customer, as defined in Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3. An eligible low-income customers' CSG subscription shall supply no more than 120 percent of the average annual electricity consumption at the low-income customers' premise to which the Subscription is attributed.

(d) The premises to which a Subscription is attributed by a CSG Subscriber shall be a premises served by Black Hills Energy and shall be within the same county as the Solar Garden Site, except that, if the CSG Subscriber's designated premise is located in a county with a population of less than 20,000 residents according to the most recent available census figures, the designated premise may be in another county adjacent to the county where the Solar Garden Site is located, so long as the adjacent county also has a population of less than 20,000 residents and the designated premises is within Black Hills Energy's retail electric service territory. If any CSG Subscriber's premises to which a Subscription hereunder pertains, as the result of the official and valid action of any governmental body, is no longer provided retail electric service from Black Hills Energy, then, effective upon the date such premises is no longer served by Black Hills Energy, CSG Producer shall remove such Subscription from the CSG Application System and, if CSG Producer fails to do so, Black Hills Energy shall have the right to remove such Subscription on the CSG Producer's behalf.

(e) At least one-eighth, or 12.5 percent, of the Subscriptions reflected in the CSG Allocation for the 2014 Community Solar Gardens program must be attributable to one or more CSG Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(m) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3. In 2015 and thereafter, at least five percent (5%) of the Subscriptions reflected in the CSG Allocation must be attributable to one or more CSG Subscribers who qualify as eligible low-income customers pursuant to Rule 3652(m).

(f) The primary business of any CSG Subscriber at the retail customer premises to which the Subscription is attributed shall not be the generation of electricity for sales to retail or wholesale customers.

3.4 Requirements and Restrictions Applicable to the PV System. The conditions set forth in the following subparagraphs (a) through (c) of this Section 3.4 must be satisfied at all times during the Term of this Agreement. Black Hills Energy shall have the right hereunder to refuse to purchase any and all Photovoltaic Energy and associated RECs produced from the PV System during the period it is not in compliance with any of such conditions.

(a) The PV System shall have at least ten CSG Subscribers.

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

(c) The PV System shall be located within Black Hills Energy's existing service territory, as defined pursuant to Colo. Rev. Stat. § 40-5-101, or pursuant to a final Commission order issuing to Black Hills Energy a certificate of public convenience and necessity authorizing Black Hills Energy to provide retail electric service within a specific geographic area, as may be amended from time to time pursuant to subsequent Commission orders. If, as the result of the official and valid action of any governmental body, the PV System is no longer located within Black Hills Energy's existing service territory, then Black Hills Energy shall also have the right to terminate this Agreement effective on or after the date the PV System is no longer located within Black Hills Energy's existing service territory, by providing ten (10) days advance written notice to CSG Producer.

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

3.5 Responsibility for Verification. The CSG Producer and Black Hills Energy shall jointly verify that each CSG Subscriber is eligible to be a CSG Subscriber in the PV System pursuant to Section 3.3 above.

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

3.7 False Representation. Any representation or warranty made by CSG Producer in this Agreement that shall prove to have been false or misleading in any material respect when made, or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Company, shall constitute an event of default subject to Section 7.1 hereof.

3.8 Black Hills Energy Disclaimer. Nothing in this Agreement shall be construed as a representation or warranty by Black Hills Energy of the design, installation or operation of the

PV System or any component thereof, and Black Hills Energy expressly disclaims any and all warranties of the equipment as to workmanship, quality, or performance, including the fitness of the equipment for the purpose intended.

#### **ARTICLE IV TERM, COMMERCIAL OPERATION AND PERFORMANCE**

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

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

4.3 Deposit. Within sixty (60) days of the Date of Commercial Operation, Black Hills Energy shall return to CSG Producer the amount paid to Black Hills Energy as a required deposit in connection with its application for the PV System under Black Hills Energy's Solar Garden Program. If Commercial Operation is not achieved within one year of the date of the application and receipt of the deposit by Black Hills Energy, such deposit shall become non-refundable and forfeited by CSG Producer.

4.4 Escrow Fund. Within ninety (90) days of the Date of Commercial Operation, Black Hills Energy shall provide to CSG Producer a written certification in accordance with Rule 3665(d)(IV)(A) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, or, if such escrowed funds were deposited directly with Black Hills Energy, Black Hills Energy shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement. If Commercial Operation is not achieved and CSG Producer provides written notice to Black Hills Energy of its intention not to pursue completion of the PV System, and such escrowed funds were deposited directly with Black Hills Energy, Black Hills Energy shall return the amount of any such escrowed funds in accordance with the terms of any escrow agreement.

4.5 Maintenance and Repair of PV System. The CSG Producer shall maintain the PV System and the individual components of the PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the PV System or any of the individual components of the system should be damaged or destroyed, the CSG Producer shall provide Black Hills Energy written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the CSG Producer's sole expense. All of Black Hills Energy's obligations hereunder during the period of such repair or replacement shall be suspended, except for making payment for any Photovoltaic Energy or RECs generated and delivered prior to such damage or destruction; provided, however, that if the time period for repair or replacement is reasonably anticipated to exceed one hundred and eighty (180) days, Black Hills Energy shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the PV System is out of operation for more than ninety (90) consecutive days during the Term of this Agreement, Black Hills Energy shall have the right to terminate this Agreement by providing written notice to CSG Producer anytime during the period following the expiration of such ninety (90) days and before the PV System has been made fully operational again. If this Agreement is terminated pursuant to this Section 4.5, then CSG Producer shall pay Black Hills Energy 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 2.2 above from the weighted-average price for RECs based on the winning bids under Black Hills Energy's most recent bid offering under its solar program in Colorado.

4.6 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, CSG Producer shall provide to Black Hills Energy in writing (or through the CSG Application System when it is technically feasible to provide such data through that system) any and all changes to the Monthly Subscription Information, in order to ensure that the CSG Subscribers and CSG Allocation applicable to each such CSG Subscriber's Subscription in the PV System are complete and accurate with respect to the Photovoltaic Energy and associated RECs produced by the PV System during such Production Month. As of the 5th business day preceding each Production Month, the Monthly Subscription Information so provided and updated shall be used by Black Hills Energy with respect to the Photovoltaic Energy produced and delivered during such Production Month to calculate the CSG Credits applicable to CSG Subscribers and to determine the amount of remaining unsubscribed Photovoltaic Energy and RECs to be purchased and sold in accordance with Article II hereof. Such data to be provided or changed by CSG Producer shall include additions and deletions to the CSG Subscribers holding Subscriptions in the PV System, the CSG Subscriber's identifying information (e.g., account number and service address attributable to each Subscription) and the CSG Allocation for each CSG Subscriber's Subscription for the Production Month, stated in kW (up to two decimal places, or in hundredths) as a portion of the total nameplate capacity of the PV System.

4.7 Subscription Limitations. CSG Producer shall issue Subscriptions in the PV System only to eligible retail electric service customers of Black Hills Energy subject to the requirements of



Section 3.3 above. To the extent a Subscription is issued to or held by a CSG Subscriber who is not an eligible retail electric customer of Black Hills Energy, such Subscription shall be deemed invalid and eliminated from the CSG Application System. The proportional share of Photovoltaic Energy output and associated RECs attributable to such invalid Subscription shall be treated as unsubscribed for purposes of the CSG Allocation and applicable pricing. In the event Black Hills Energy discovers through a credible source that the CSG Subscriber to which such CSG Allocation is attributable no longer holds a valid Subscription in the PV System, Black Hills Energy reserves the right to suspend the application of CSG Credits for purposes of this Agreement, either in whole or in part, until the situation is remedied by the CSG Producer.

4.8 Subscription Transfers. Subscriptions may be transferred between eligible CSG Subscribers by reflecting such transfer in the Monthly Subscription Information through changes by CSG Producer via written notice to Black Hills Energy (or through the CSG Application System when it is technically feasible to provide such data through that system). The CSG Subscriber may from time to time change the premises to which the Subscription is attributed, so long as the requirements of Section 3.3(d) are met.

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

4.10 No Relocation. The PV System shall be located at the Solar Garden Site at all times during the Term of this Agreement.

4.11 Registration and Reporting. If the PV System has a nameplate rating of one MW or greater, CSG Producer shall register the PV System and report the PV System's production data to the Western Electricity Coordinating Council ("WECC") in accordance with Rule 3659(j), 4 *Code of Colorado Regulations* 723-3.

4.12 Annual Reports. Within ten (10) days of its issuance, CSG Producer shall provide to Black Hills Energy a copy of its public annual report, including a copy of the annual report provided to each CSG Subscriber, all as required by Rule 3665(e)(II), 4 *Code of Colorado Regulations* 723-3.

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

## ARTICLE V

## PRODUCTION METER AND INTERCONNECTION

5.1 Production Meter. Upon the initial satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, Black Hills Energy shall install, and thereafter own, operate, maintain and read the Production Meter, which shall be sufficiently sized to measure all Photovoltaic Energy generated by the PV System, and CSG Producer shall reimburse Black Hills Energy for the cost of installing the Production Meter. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to CSG Producer by Black Hills Energy after the Production Meter is installed. If CSG Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. Black Hills Energy reserves the right to replace the Production Meter, at its sole cost, at any time and for any reason.

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

5.3 Failure to Maintain Telecommunication Line. If the telecommunication line required to be maintained by CSG Producer pursuant to Section 5.2 is inactive or non-operational during any Production Month when Black Hills Energy attempts to access measurement data from the telemetry equipment on the Production Meter, CSG Producer shall be assessed a Trip Charge applicable to non-gratuitous labor service at the currently-effective rate set forth in the schedules of charges for rendering service in Black Hills Energy's Colorado electric tariff. If the telecommunication line is inactive or non-operational for three consecutive Production Months, then, in addition to the applicable Trip Charges, all energy produced and delivered from the PV System shall be treated and priced as unsubscribed energy hereunder effective as of the first calendar day of such third Production Month and continuing until the subsequent Production Month during which the telecommunication line is made operational and active. CSG Producers payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to CSG Producer by Black Hills Energy. If CSG Producer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month to be invoiced monthly.

5.4 Interconnection Agreement. The Parties recognize that CSG Producer and Black Hills Energy will enter into a separate Interconnection Agreement in accordance with the interconnection process provided for by Rule 3667 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, Black Hills Energy's Colorado electric tariffs relating to Cogeneration and Small Power Production Facilities, and Interconnection Standards for Cogeneration and Small Power Production Facilities as established by Black Hills Energy, as may be updated from time to time. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the PV System

pursuant to the Interconnection Agreement shall be subject to the prior satisfaction of all of the conditions set forth in Sections 3.3 and 3.4 above, but that in all other respects the Interconnection Agreement shall be a separate and free-standing contract and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify CSG Producer's or Black Hills Energy's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between CSG Producer and Black Hills Energy with respect to the Interconnection Agreement.

5.5 House Power. This Agreement does not provide for House Power. CSG Producer shall be solely responsible for arranging retail electric service exclusively from Black Hills Energy in accordance with Black Hills Energy's Colorado Electric Tariffs. CSG Producer shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means, and waives any regulatory or other legal right to the contrary, except the right to self-generate as provided in this Section 5.5. CSG Producer's right to self-generate hereunder shall be limited to the electrical energy consumed at the Solar Garden Site that is directly related to the PV System's generation, including system operation, performance monitoring and associated communications, and shall not include energy necessary for domestic or other purposes, such as for perimeter lighting, a visitor's center or any other structures or facilities at the Solar Garden Site. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be a separate from this Agreement and shall be interpreted independently of the Parties' respective obligations under this Agreement. Notwithstanding any other provision in this Agreement, nothing with respect to the arrangements for House Power shall alter or modify CSG Producer's or Black Hills Energy's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between CSG Producer and Black Hills Energy with respect to the arrangements for House Power.

## **ARTICLE VI FORCE MAJEURE**

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

delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority having jurisdiction.

(b) The term Force Majeure does not include:

(i) Any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of CSG Producer, unless such acts or omissions are themselves excused by reason of Force Majeure;

(ii) Any full or partial curtailment in the electric output of the PV System that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following: catastrophic equipment failure; acts of God; sudden actions of the elements, including, but not limited to: floods; hurricanes, tornadoes; sabotage; terrorism; war; riots; and emergency orders issued by a governmental authority or

(iii) Changes in market conditions that affect the cost of Black Hills Energy's or CSG Producer's supplies, or that affect demand or price for any of Black Hills Energy's or CSG Producer's products.

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

i. The non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;

ii. The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

iii. The non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and

iv. When the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

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

6.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure. This provision shall not operate to relieve the Customer of any obligation to return to Black Hills Energy a prorated amount of any rebate paid under any related Rebate Agreement pursuant to the Terms and Conditions thereof.

## **ARTICLE VII DEFAULT**

7.1 Default. Any breach of a material term or provision of this Agreement shall be considered an event of default hereunder. If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the prevailing Party in any action brought for the purpose of enforcing such provisions shall be entitled to recover its reasonable attorney fees, expenses and costs of such action from the non-prevailing Party. Prior to commencing any action to enforce this Agreement, the non-defaulting Party shall provide written notice of default to the Party asserted to be in default and the Party asserted to be in default shall have a period of thirty (30) days following receipt of such written notice within which to cure the asserted default (or if the asserted default is of a nature which cannot reasonably be cured within such 30-day period, to commence and thereafter diligently pursue a cure thereof). Failure of either Party to assert a default or to enforce any term or condition of this Agreement shall not constitute a waiver of any other similar or other default, or waiver of such term or condition or of any other term or condition of this Agreement. Each Party hereby irrevocably and unconditionally waives any right to a trial by jury for the resolution of any dispute arising under this Agreement.

## **ARTICLE VIII LIABILITY AND INDEMNIFICATION**

8.1 Limitation of Liability. Black Hills Energy 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. Black Hills Energy shall not be liable to the CSG Producer for any punitive, special, exemplary or consequential damages, including but not limited to, lost profits, loss of use, and costs of replacement, whether based in contract, tort, upon any theory of indemnity, or otherwise. Black Hills Energy makes no warranty or representation concerning the taxable consequences, if any, to CSG Producer with respect to the production and sale of

Photovoltaic Energy or RECs, and CSG Producer is urged to seek professional advice regarding those issues.

8.2 Indemnification by CSG Producer. CSG Producer shall indemnify, defend, and hold Black Hills Energy, 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, or CSG Producer's administration of Subscriptions or the performance of its responsibilities as a subscriber organization.

## **ARTICLE IX LAWS AND REGULATORY BODIES**

9.1 Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto.

9.2 Rights upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over these premises takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either party hereto (in that party's reasonable good faith opinion), then the party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Black Hills Energy and CSG producer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

9.3 Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 9.1 or 9.2, above, each of the Parties

hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of CSG Producer to sell and to deliver the Photovoltaic Energy output of the PV System and associated RECs to Black Hills Energy and the obligations of Black Hills Energy to accept and pay CSG Producer as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Sections 4.1 or 9.2 above.

9.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

## **ARTICLE X MISCELLANEOUS PROVISIONS**

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

10.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto, and shall not be assigned by either Party without the written consent of the non-assigning Party, which consent shall not be unreasonably withheld. In no event shall any assignment by CSG Producer become effective before a new CSG Subscriber Agency Agreement has been entered into between CSG Producer's assignee and each and every CSG Subscriber.

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

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

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

10.6 Construction. No understandings or agreements not expressly stated herein shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the respective parties. The rule of construction

that ambiguous provisions shall be interpreted against the drafter shall not apply to this Agreement.

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

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

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

If to Black Hills Energy:

Black Hills Energy  
Community Solar Gardens Program Manager  
105 S. Victoria Ave  
Pueblo, CO 81003  
Fax: 1.719.562.5427  
Email: kevin.pratt@blackhillscorp.com

If to CSG Producer:

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

10.10 Entire Agreement. This Agreement, together with all Exhibits attached hereto, constitutes the entire understanding and agreement between the Parties with respect to the purchase of the Photovoltaic Energy output of the PV System and associated RECs from CSG Producer, and all prior agreements, understandings, or representations with respect to its subject



matter are hereby canceled in their entirety and are of no further force and effect. Any amendment to this Agreement shall be in writing and signed by both parties hereto.

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

**CSG Producer**

CSG Producer Name (printed): \_\_\_\_\_

CSG Producer Representative: \_\_\_\_\_  
Title: \_\_\_\_\_

CSG Producer Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Black Hills/Colorado Electric Utility Company LP, d/b/a/ Black Hills Energy**

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

As authorized agent for Black Hills Energy

Date: \_\_\_\_\_

**PV System Owner (if different from CSG Producer)**

PV System Owner Name (printed): \_\_\_\_\_

PV System Owner Representative: \_\_\_\_\_  
Title: \_\_\_\_\_

PV System Owner Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Solar Garden ID No.

**Exhibit A**  
**To**  
**Community Solar Gardens Agreement for CSG Producers**

DESCRIPTION OF SOLAR GARDEN SITE:

**Exhibit B**  
**To**  
**Community Solar Gardens Agreement for CSG Producers**

**SUBSCRIBER AGENCY AGREEMENT**

**FOR BLACK HILLS ENERGY COMMUNITY SOLAR GARDEN (CSG) SERVICE**

CSG Subscriber Name: \_\_\_\_\_

CSG Subscriber Retail Customer Account No.: \_\_\_\_\_

CSG Subscriber Service Address: \_\_\_\_\_  
\_\_\_\_\_

CSG Subscriber E-mail Address: \_\_\_\_\_

CSG Subscriber Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

CSG Subscriber Telephone No: \_\_\_\_\_ (Primary) \_\_\_\_\_ (Alt.)

CSG Producer (Subscriber Organization) Name: \_\_\_\_\_

Solar Garden ID No: \_\_\_\_\_

Name and Location of Solar Garden: \_\_\_\_\_

CSG Subscriber's Initial Subscription Share (in Watts or kilowatts ["kW"]): \_\_\_\_\_ Watts [kW]

The undersigned CSG Subscriber hereby authorizes \_\_\_\_\_  
("CSG Producer"), and CSG Producer hereby accepts the responsibility, to act as CSG  
Subscriber's agent for purposes of selling to Black Hills/Colorado Electric Utility Company LP,  
d/b/a/ Black Hills Energy, ("Black Hills Energy") all of CSG Subscriber's beneficial interest in  
the Photovoltaic Energy generated by, and delivered to Black Hills Energy from, the  
Photovoltaic Energy System ("PV System") identified above, including full authority for CSG  
Producer to enter into a long-term contract on behalf of CSG Subscriber for such sale and to  
administer such contract, all pursuant to Black Hills Energy's Community Solar Gardens  
Program and Rate Schedule CSG of Black Hills Energy's electric tariff on file with the Colorado  
Public Utilities Commission ("Commission"), as amended and in effect from time to time.

1. Duties of CSG Producer Generally. CSG Producer shall be responsible for issuing and  
managing the subscriptions of all CSG subscribers in the PV System and for selling to Black  
Hills Energy the subscribed and unsubscribed portions of the Photovoltaic Energy and associated

Renewable Energy Credits generated by the PV System and delivered to Black Hills Energy at the production meter located at the PV System site. CSG Subscriber acknowledges and agrees that the CSG Producer will retain the associated Renewable Energy Credits produced by the PV System and will sell the associated Renewable Energy Credits separately to Black Hills Energy. In performing such functions, CSG Producer shall be solely responsible for communicating directly to Black Hills Energy CSG Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy generated by the PV System. CSG Subscriber also acknowledges and agrees that Black Hills Energy shall exclusively rely on such information as regularly and timely communicated from the CSG Producer for the purpose of calculating the CSG Credit that will be applied by Black Hills Energy and reflected on CSG Subscriber's subsequent electric service bills as compensation for Black Hills Energy's receipt of CSG Subscriber's share of the Photovoltaic Energy generated by the PV System, in accordance with Rate Schedule CSG of Black Hills Energy's Colorado electric tariff.

2. Adjustments of Prior Period CSG Bill Credits. To the extent the subscription information communicated by CSG Producer to Black Hills Energy and used by Black Hills Energy for purposes of calculating the CSG Credit applied on CSG Subscriber's electric service bill was incorrect, CSG Producer shall be responsible for processing all corrections or other adjustments of CSG Credits previously applied by Black Hills Energy to CSG Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such CSG Credits, as necessary, among CSG Subscriber and other CSG subscribers owning subscriptions in the PV System. CSG Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Black Hills Energy as an CSG Credit on any of CSG Subscriber's electric service bills for prior periods shall be administered exclusively by CSG Producer, and that Black Hills Energy shall not be required to increase or reduce any CSG Credit previously applied to CSG Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription information for the PV System communicated to Black Hills Energy by CSG Producer. In connection with CSG Producer's execution of its responsibilities to process any such adjustments to CSG Credits previously applied by Black Hills Energy with respect to the PV System, CSG Subscriber hereby authorizes Black Hills Energy to disclose and release to CSG Producer any and all information reflected on CSG Subscriber's bills for retail electric service for all relevant periods, as may be necessary for CSG Producer to fully and properly administer such prior period adjustments among all CSG subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize CSG Producer to act as CSG Subscriber's agent with respect to CSG Subscriber's beneficial interest in and to the Photovoltaic Energy generated by the PV System and delivered to Black Hills Energy to the extent that CSG Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Colo. Rev. Stat. § 40-20-127, the effective rules and regulations promulgated thereunder by the Commission, and Rate Schedule CSG of Black Hills Energy's Colorado electric tariff.

4. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both CSG Subscriber and CSG Producer and shall continue in effect for so long as a valid and existing contract between Black Hills Energy and CSG Producer for the

purchase and sale of such Photovoltaic Energy and the associated Renewable Energy Credits shall continue in effect.

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

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

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

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

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

**CSG SUBSCRIBER**

**CSG PRODUCER**

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



CSG Reservation Letter

**Black Hills Energy Community Solar Gardens Reservation Letter**

<Today's Date>

<Owner Name>

<Mailing Address>, <Mailing City>, <Mailing State> <Mailing Zip>

Account Number: <Account Number>

Solar Garden ID: <Garden ID>

Dear \_\_\_\_\_:

Thank you for your interest in the Black Hills Energy Community Solar Gardens program. We are pleased to offer to you a price of \$\_\_\_\_\_ per kWh to acquire the Renewable Energy Credits (RECs), and a price of \$\_\_\_\_\_ per kWh payable to the CSG Subscribers to acquire the renewable energy, generated by the Community Solar Garden (CSG) project specified below. This Reservation is contingent upon approval of the completed photovoltaic project as specified below. If the final system size varies from these specifications by more than 10%, your application will be declined.

Solar Garden location: <garden street> <garden city>, <garden state> <garden zip>

PV system size: <total kW> kW DC

PVWatts annual energy production estimate: <kWh> kWh

The prices for the renewable energy and the RECs quoted in this letter and this Reservation are valid for 12 months from this date: <date credentials granted>. If your project is not completed within 12 months, your application deposit will be forfeited and your application will be declined. You can re-apply if you are still interested, but the project will be subject to current program availability and incentive levels.

Please sign this letter and upload to the application website. If you have questions, you can contact us at <insert email address>.

I hereby confirm and accept this Reservation Letter to secure the offer:

\_\_\_\_\_  
Signature of Owner

Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Black Hills Energy reserves the right to recalculate the Community Solar Gardens payment if final equipment specifications and installation standards differ from specifications listed above.

CSG Subscriber Agency Agreement

**SUBSCRIBER AGENCY AGREEMENT**

**FOR BLACK HILLS ENERGY COMMUNITY SOLAR GARDEN (CSG) SERVICE**

CSG Subscriber Name: \_\_\_\_\_

CSG Subscriber Retail Customer Account No.: \_\_\_\_\_

CSG Subscriber Service Address: \_\_\_\_\_

\_\_\_\_\_

CSG Subscriber E-mail Address: \_\_\_\_\_

CSG Subscriber Mailing Address: \_\_\_\_\_

\_\_\_\_\_

CSG Subscriber Telephone No: \_\_\_\_\_ (Primary) \_\_\_\_\_ (Alt.)

CSG Producer (Subscriber Organization) Name: \_\_\_\_\_

Solar Garden ID No: \_\_\_\_\_

Name and Location of Solar Garden: \_\_\_\_\_

CSG Subscriber's Initial Subscription Share (in Watts or kilowatts ["kW"]): \_\_\_\_ Watts [kW]

The undersigned CSG Subscriber hereby authorizes \_\_\_\_\_  
("CSG Producer"), and CSG Producer hereby accepts the responsibility, to act as CSG  
Subscriber's agent for purposes of selling to Black Hills/Colorado Electric Utility Company LP,  
d/b/a/ Black Hills Energy, ("Black Hills Energy") all of CSG Subscriber's beneficial interest in  
the Photovoltaic Energy generated by, and delivered to Black Hills Energy from, the  
Photovoltaic Energy System ("PV System") identified above, including full authority for CSG  
Producer to enter into a long-term contract on behalf of CSG Subscriber for such sale and to  
administer such contract, all pursuant to Black Hills Energy's Community Solar Gardens  
Program and Rate Schedule CSG of Black Hills Energy's electric tariff on file with the Colorado  
Public Utilities Commission ("Commission"), as amended and in effect from time to time.

1. Duties of CSG Producer Generally. CSG Producer shall be responsible for issuing and  
managing the subscriptions of all CSG subscribers in the PV System and for selling to Black

Hills Energy the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Black Hills Energy at the production meter located at the PV System site. CSG Subscriber acknowledges and agrees that the CSG Producer will retain the associated Renewable Energy Credits produced by the PV System and will sell the associated Renewable Energy Credits separately to Black Hills Energy. In performing such functions, CSG Producer shall be solely responsible for communicating directly to Black Hills Energy CSG Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy generated by the PV System. CSG Subscriber also acknowledges and agrees that Black Hills Energy shall exclusively rely on such information as regularly and timely communicated from the CSG Producer for the purpose of calculating the CSG Credit that will be applied by Black Hills Energy and reflected on CSG Subscriber's subsequent electric service bills as compensation for Black Hills Energy's receipt of CSG Subscriber's share of the Photovoltaic Energy generated by the PV System, in accordance with Rate Schedule CSG of Black Hills Energy's Colorado electric tariff.

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3. Limitation of Agency. This Agency Agreement shall only serve to authorize CSG Producer to act as CSG Subscriber's agent with respect to CSG Subscriber's beneficial interest in and to the Photovoltaic Energy generated by the PV System and delivered to Black Hills Energy to the extent that CSG Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Colo. Rev. Stat. § 40-20-127, the effective rules and regulations promulgated thereunder by the Commission, and Rate Schedule CSG of Black Hills Energy's Colorado electric tariff.

4. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both CSG Subscriber and CSG Producer and shall continue in effect for so



long as a valid and existing contract between Black Hills Energy and CSG Producer for the purchase and sale of such Photovoltaic Energy and the associated Renewable Energy Credits shall continue in effect.

(b) This Agency Agreement may be terminated by either CSG Producer or CSG Subscriber upon Black Hills Energy's receipt of notice that CSG Subscriber's subscription in the PV System has been terminated or transferred in its entirety, or that CSG Subscriber no longer holds an interest in the beneficial use of the Photovoltaic Energy generated by the PV System.

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

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

7. Consent to Disclose Account Information. CSG Subscriber shall provide to Black Hills Energy a completed and signed "Consent to Disclose Utility Customer Data" form granting consent for Black Hills Energy to share information regarding CSG Subscriber's past and present electric usage at the Service Address(es) identified above in order for CSG Producer independently to verify the extent of CSG Subscriber's eligibility to hold a subscription in the PV System pursuant to Colo. Rev. Stat. § 40-20-127, the effective rules and regulations promulgated thereunder by the Commission, and Rate Schedule CSG of Black Hills Energy's Colorado electric tariff. The Consent to Disclose Utility Customer Data form shall be that form posted from time to time on the Black Hills Energy website or the website of the Commission.

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

**CSG SUBSCRIBER**

**CSG PRODUCER**

\_\_\_\_\_  
By \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
By \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## CSG Application Deposit Form

Solar Garden ID:

### Application Deposit Form

**Subscriber Organization Name:**

**Subscriber Organization Address:**

**Application Deposit Amount:**

**Application System Size:**

**System Access Date:**

The undersigned Subscriber Organization states that it is making a deposit (the Deposit) in the above amount with Black Hills Energy in association with its application under the Community Solar Gardens program in the manner described below:

☐ Amount wired to Black Hills Energy (attach a copy of the wire transfer receipt)

☐ Check written to Black Hills Energy (attach a copy of the check)

Black Hills Energy shall refund the Deposit to the Subscriber Organization, without interest, within 60 days if (1) the application is not initially accepted into the Black Hills Energy Community Solar Gardens application process or, (2) if the solar garden is placed into commercial operation within one year from the date the application is accepted into the Black Hills Energy Community Solar Gardens application process. Subscriber Organization understands and acknowledges that the entire amount of the Deposit shall be forfeited and credited to Black Hills Energy's Renewable Energy Standard Adjustment fund if the application fails to comply with all program rules and regulatory requirements, including, without limitation, the requirement that ten subscribers in the project be validated within 30 days and that the project is completed and placed into commercial operation within 12 months of acceptance into the Black Hills Energy Community Solar Gardens application process.

**Applicant:**

Subscriber Organization Name Printed \_\_\_\_\_

Subscriber Organization Signature \_\_\_\_\_

Date \_\_\_\_/\_\_\_\_/\_\_\_\_

### CSG Application Deposit Form

This form must be uploaded to the Black Hills Energy Community Solar Gardens application system. The Deposit must be received by Black Hills Energy on or before the system access date identified above. Failure to comply with this deadline will result in rejection of the application. If remitting by check, payment must be sent either via overnight courier or via U.S. Mail, first class, postage prepaid and postmarked at least five business days before the system access date listed above.

The Subscriber Organization must sign this form whether or not it is the system owner.

The Solar Garden ID must be included on the check.

To be accepted, the Deposit shall be remitted to the following, whether by hand-delivery, courier or mail:

Black Hills Energy  
Community Solar Gardens Program Manager  
105 S. Victoria Ave  
Pueblo, CO 81003



CSG Escrow Form

Solar Garden ID:

## ESCROW FORM

**Subscriber Organization Name:**

**Subscriber Organization Address:**

**Application Escrow Amount:**

**Application System Size:**

**System Access Date:**

The undersigned Subscriber Organization states that, in order to satisfy the minimum capitalization requirements in accordance with Section 3665(d)(IV) of the Colorado Public Utilities Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, it is making or has made the following remittance of funds to be held in escrow in an amount not less than \$100/kW of the nameplate rating of the above identified project:

- ☐ Check written to Black Hills Energy (attach a copy of the check).
- ☐ Amount held in an escrow account with an independent escrow agent (attach a copy of the escrow agreement, including proof that Black Hills Energy is the signatory on the escrow account for the release of escrowed funds).

Amounts deposited with Black Hills Energy to be held in escrow shall not bear interest and shall be fully refundable, without interest, within 90 days of the earlier of: (1) achievement of commercial operation of the above-identified solar system and interconnection with Black Hills Energy's electric distribution system; or (2) Black Hills Energy's receipt of written notice by the Subscriber Organization of its intention not to pursue completion of the project.

**Applicant:**

Subscriber Organization Name Printed \_\_\_\_\_

Subscriber Organization Signature \_\_\_\_\_

Date \_\_\_\_/\_\_\_\_/\_\_\_\_

This form must be uploaded to the Black Hills Energy Community Solar Gardens application system. The escrow funds must be received by Black Hills Energy on or before the system access date identified above. Failure to comply with this deadline will result in rejection of the application. If remitting by check, payment must be sent either via overnight courier or via U.S.

Mail, first class, postage prepaid and postmarked at least five business days before the system access date listed above.

The Subscriber Organization must sign this form whether or not it is the system owner.

The Solar Garden ID must be included on the check.

To be accepted, the escrow funds shall be remitted to the following, whether by hand-delivery, courier or mail:

Black Hills Energy  
Community Solar Gardens Program Manager  
105 S. Victoria Ave  
Pueblo, CO 81003

## EXHIBIT 3

Table for Settlement Agreement  
Illustrative Calculation

Rate Schedule Class	SubClass	Monthly CSG Bill Credit
RESIDENTIAL	REGULAR	\$ 0.0922
RESIDENTIAL	NET METER	\$ 0.0870
SMALL GENERAL SERVICE	NON-DEMAND	\$ 0.1090
SMALL GENERAL SERVICE	DEMAND	\$ 0.0976
LARGE GENERAL SERVICE	SECONDARY	\$ 0.0891
LARGE GENERAL SERVICE	PRIMARY	\$ 0.0825
LARGE POWER SERVICE	SECONDARY	\$ 0.0832
LARGE POWER SERVICE	PRIMARY	\$ 0.0752
LARGE POWER SERVICE	TRANSMISSION	\$ 0.0915
IRRIGATION	PUMPING	\$ 0.1043

EXHIBIT 3

12A-1207A

Illustrative Calculation of 2014 Monthly CSG Bill Credits by Customer Class on per kWh basis

	RESIDENTIAL			SMALL GENERAL SERVICE			LARGE GENERAL SERVICE			LARGE POWER SERVICE				LIGHTING					TOTAL IRRIGATION PUMPING				
	TOTAL RESIDENTIAL	REGULAR	NET METER SOLAR	TOTAL SGS	NON-DEMAND	DEMAND METERED	TOTAL LGS	SECONDARY	PRIMARY	TOTAL LPS	SECONDARY	PRIMARY	TRANSMISSION	TOTAL LIGHTING	TRAFFIC SIGNALS & FLASHERS	PRIVATE AREA LIGHTS LEASED	STREET LIGHTING	STREET LTG ENER & MAINT CUST-OWNED					
	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	(s)	(t)	(u)	(v)	(w)	(x)	(y)	(z)	(aa)	(ab)		(ac)	(ad)	(ae)	(ag)
Total Aggregate Retail Rate (TARR)		<u>\$ 0.1213</u>	<u>\$ 0.1193</u>			<u>\$ 0.1399</u>	<u>\$ 0.1240</u>			<u>\$ 0.1119</u>	<u>\$ 0.1023</u>			<u>\$ 0.1065</u>	<u>\$ 0.0914</u>	<u>\$ 0.1046</u>		n/a	n/a	n/a	n/a		<u>\$ 0.1333</u>
Total T&D Cost Component		<u>\$ (0.0234)</u>	<u>\$ (0.0266)</u>			<u>\$ (0.0249)</u>	<u>\$ (0.0207)</u>			<u>\$ (0.0172)</u>	<u>\$ (0.0145)</u>			<u>\$ (0.0179)</u>	<u>\$ (0.0111)</u>	<u>\$ (0.0077)</u>		n/a	n/a	n/a	n/a		<u>\$ (0.0230)</u>
TCA Component		<u>\$ (0.0033)</u>	<u>\$ (0.0033)</u>			<u>\$ (0.0033)</u>	<u>\$ (0.0033)</u>			<u>\$ (0.0033)</u>	<u>\$ (0.0033)</u>			<u>\$ (0.0033)</u>	<u>\$ (0.0033)</u>	<u>\$ (0.0033)</u>		n/a	n/a	n/a	n/a		<u>\$ (0.0033)</u>
RESA {(0.02/1.02) or .019608 times TARR}		<u>\$ (0.0024)</u>	<u>\$ (0.0023)</u>			<u>\$ (0.0027)</u>	<u>\$ (0.0024)</u>			<u>\$ (0.0022)</u>	<u>\$ (0.0020)</u>			<u>\$ (0.0021)</u>	<u>\$ (0.0018)</u>	<u>\$ (0.0021)</u>		n/a	n/a	n/a	n/a		<u>\$ (0.0026)</u>
CSG Bill Credit per Customer Class		<u>\$ 0.0922</u>	<u>\$ 0.0870</u>			<u>\$ 0.1090</u>	<u>\$ 0.0976</u>			<u>\$ 0.0891</u>	<u>\$ 0.0825</u>			<u>\$ 0.0832</u>	<u>\$ 0.0752</u>	<u>\$ 0.0915</u>		n/a	n/a	n/a	n/a		<u>\$ 0.1043</u>
TARR minus T&D Cost minus TCA minus RESA																		n/a	n/a	n/a	n/a		

12A-1207A  
Calculation Methodology for Determination of CSG Bill Credits per BHE Phase II Class Cost of Service Study and BHE Proposed Rates/Revenues

[illegible]