



Solar Garden ID No.: BHE CSG 2018-06

**Black Hills 2018 CSG RFP Program**

**RFP Low-Income Community Solar Garden Agreement  
Community Solar Garden Photovoltaic (PV) System for CSG  
Owners/Subscriber Organizations**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Black Hills/Colorado Electric Utility Company, LP 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 SO”)<sup>1</sup>, 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, which is entered into as part of the Black Hills Low-Income CSG RFP Program, governs the relationship between Black Hills Energy and CSG SO, both on behalf of itself and as authorized agent for CSG Low-Income Subscribers (as defined in Section 1.18 below) and the CSG Owner (as defined in Section 1.13 below), with respect to the Photovoltaic Energy and associated Renewable Energy Credits (“RECs” (defined below)) generated by the community solar garden photovoltaic solar system (the “CSG 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

<sup>1</sup> The term “CSG SO” is synonymous with the term CSG Low-Income Subscriber Organization, as that term is defined in Commission Rule 3652(i) which reads: “‘CSG subscriber organization’ means any for-profit or nonprofit entity permitted by Colorado law and whose sole purpose shall be: (I) To beneficially own and operate the CSG; or (II) To operate the CSG that is built, owned, and operated by a third party under contract with such CSG Subscriber organization.”

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 “CSG Tariff” shall mean the Company’s Community Solar Garden Service Tariff as approved by the Commission.
- 1.3 “Date of Commercial Operation” shall mean the day upon which Commercial Operation is first achieved pursuant to Section 4.2 hereof.
- 1.4 “Electric Tariffs” shall mean Black Hills Energy’s electric tariffs as in effect and on file with the Commission from time to time.
- 1.5 “Force Majeure” shall have the meaning as set forth in Section 6.1 of this Agreement.
- 1.6 “House Power” shall mean the supply of retail power for consumption at the Solar Garden Site.
- 1.7 “Interconnection Agreement” shall mean the separate agreement to be entered into between CSG SO and Black Hills Energy providing the terms and conditions by which CSG SO may interconnect and operate the CSG PV System in parallel with Black Hills Energy’s electric distribution system at the Solar Garden Site.
- 1.8 “Monthly Subscription Information” shall mean the information timely provided to Black Hills Energy or changed by CSG SO via written notice to Black Hills Energy pursuant to Section 4.5 hereof, setting forth the names of the CSG Low-Income Subscribers holding Subscriptions in the CSG PV System, each such CSG Low-Income Subscriber’s identifying information, and the CSG Allocation applicable to each such CSG Low-Income Subscriber’s Subscription, reflecting each CSG Low-Income Subscriber’s allocable portion of Photovoltaic Energy produced by the CSG PV System during a particular Production Month.
- 1.9 “Photovoltaic Energy” shall mean the net electric energy generated from the CSG 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.
- 1.10 “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 CSG PV System at the point where the Photovoltaic Energy changes possession from CSG SO to Black Hills Energy.
- 1.11 “Production Month” shall mean the calendar month during which Photovoltaic Energy is produced by the CSG PV System and delivered to Black Hills Energy at the Production Meter.

1.12 “CSG PV System,” also known as a Community Solar Garden (“CSG”) 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. The CSG PV System shall operate solely for the benefit of CSG Low-Income Subscribers as defined further at Section 1.18.

1.13 “CSG Owner” shall mean the entity or entities holding legal title or otherwise having full rights of ownership in and to the CSG PV System. The term “CSG Owner” is synonymous with the term “CSG Owner” under Commission Rule 3652(h).<sup>2</sup> If the CSG Owner is the same entity as CSG SO, then Section 3.2 hereof shall not be applicable.

1.14 “Renewable Energy Credit” or “REC” shall have the meaning set forth in Rule 3652(y), 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 CSG PV System’s actual energy production or the CSG PV System’s energy production capability because of the CSG PV System’s environmental or renewable characteristics or attributes. For the avoidance of doubt, a “REC” excludes (a) any local, state or federal production tax credit, depreciation deductions or other tax credits providing a tax benefit to CSG SO or the owner of the CSG PV System based on ownership of, or energy production from, any portion of the CSG PV System, including the investment tax credit expected to be available to CSG SO or the owner of the CSG PV System with respect to the CSG PV System under Internal Revenue Code Section 48 (Energy Credits); (b) any direct governmental grant or payment inuring to the benefit of CSG SO or the owner of the CSG PV System based on ownership of, or energy production from, any portion of the CSG PV System, pursuant to Section 1603 of the American Recovery and Reinvestment Act, or other federal or state legislation; and (c) depreciation and other tax benefits arising from ownership or operation of the CSG 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.

1.15 “Solar Garden Site” shall mean the parcel of real property on which the CSG 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

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<sup>2</sup> Commission Rule 3652(h) reads: “‘CSG Owner’ means the owner of the solar generation facilities installed at a CSG that contracts to sell the unsubscribed renewable energy and RECs generated by the CSG to an investor owned QRU. A CSG subscriber organization operating a CSG not owned by it will be deemed to be a CSG owner for purposes of these rules. A CSG owner may be the QRU or any other for-profit or nonprofit entity or organization, including a CSG subscriber organization.”

and maintenance of the CSG PV System. The Solar Garden Site is more specifically described in Exhibit A to this Agreement.

1.16 “CSG Allocation” shall mean the monthly allocation, stated in kilowatts (“kW”) as a share of the total nameplate capacity of the CSG PV System, applicable to each CSG Low-Income Subscriber’s Subscription reflecting such CSG Low-Income Subscriber’s allocable portion of Photovoltaic Energy produced by the CSG PV System in a particular Production Month. In accordance with Section 4.5 below, the CSG SO is required to provide the CSG Allocation to Black Hills Energy on a monthly basis in writing, 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 Low-Income Subscriber as a credit on the CSG Low-Income Subscriber’s retail electric service bill to compensate the CSG Low-Income Subscriber for its beneficial share of Photovoltaic Energy produced by the CSG PV System and delivered to Black Hills Energy from the CSG SO, in accordance with the CSG Tariff.

1.18 “CSG Low-Income Subscriber” shall mean the low-income retail electric service customer of Black Hills Energy who: (a) owns a beneficial share of the Photovoltaic Energy produced by the CSG 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 Low-Income Subscriber Agency Agreement with the CSG SO. Low-income shall have the meaning set forth in Section 1.21.

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

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

1.21 “Low-Income” shall mean: (1) non-profit affordable housing or public authority housing<sup>3</sup> for low-income residents only; and/or (2) low-income occupants of single family housing, where “low-income” is further defined as less than or equal to 185% of Federal Poverty Level (“FPL”) consistent with Colorado law.

## **ARTICLE II**

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

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<sup>3</sup> The occupancy by residents may be permanent or temporary.

2.1 Sale and Delivery of Subscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, CSG SO, as CSG Low-Income Subscriber's agent pursuant to that certain CSG Low-Income Subscriber Agency Agreement attached hereto as Exhibit B, shall sell and deliver to Black Hills Energy at the Production Meter all of the Photovoltaic Energy produced by the CSG PV System and attributable to Subscriptions held by all CSG Low-Income Subscribers in the CSG PV System.

(a) The purchase price and full consideration for all of the Photovoltaic Energy produced by the CSG PV System and attributable to Subscriptions held by all CSG Low-Income Subscribers in the CSG PV System is the CSG Credits, as described in Section 2.1(b).

(b) For each CSG Low-Income Subscriber, Black Hills Energy shall apply a CSG Credit each billing period to such CSG Low-Income Subscriber's bill for retail electric service in accordance with the CSG Tariff based upon the CSG Low-Income 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.

(c) For purposes of applying the CSG Credit to CSG Low-Income Subscribers' bills, Black Hills Energy shall be entitled to rely exclusively on the Monthly Subscription Information as timely provided to Black Hills Energy by the CSG SO on a monthly basis in writing, in accordance with the procedures set forth in Section 4.5 below. The correction of previously-applied CSG Credits among CSG Low-Income Subscribers due to any inaccuracy reflected in such Monthly Subscription Information with regard to a CSG Low-Income Subscriber's Subscription in the CSG PV System and the associated beneficial share of Photovoltaic Energy produced by the CSG PV System shall be the full responsibility of the CSG SO.

2.2 Purchase and Sale of RECs Associated with Subscribed Photovoltaic Energy. Effective upon the Date of Commercial Operation, CSG SO agrees to sell and Black Hills Energy agrees to purchase all of the RECs associated with the Photovoltaic Energy produced by the CSG PV System and delivered to Black Hills Energy at the Production Meter attributable to Subscriptions held by all CSG Low-Income 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 CSG PV System. Black Hills Energy shall pay CSG SO the price of **[INSERT PRICING TERMS OF SUCCESSFUL RESPONDENT'S RFP SUBMITTAL]** for RECs purchased pursuant to this section. Payments for such purchases shall be made monthly by check to CSG SO 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 SO agrees to sell and Black Hills Energy agrees

to purchase all of the Photovoltaic Energy and associated RECs produced by the CSG PV System and delivered to Black Hills Energy at the Production Meter not attributable to a Subscription held by any CSG Low-Income Subscriber based upon the Monthly Subscription Information applicable to the Production Month. Black Hills Energy shall pay CSG SO a price per kWh for the Photovoltaic Energy and associated RECs purchased pursuant to this section at a rate equal to the Company's average hourly incremental cost of electricity supply over the immediately preceding calendar year pursuant to Rule 3665(c)(V) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3 (this rate, as amended from time to time, is found in the Company's Electric Tariff). Payments for such purchases shall be made monthly by check to CSG SO 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 SO shall be deemed to be in control of the Photovoltaic Energy output from the CSG 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 SO 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 SO 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 SO shall not sell any Photovoltaic Energy or any associated RECs produced by the CSG PV System to any person other than Black Hills Energy during the Term of this Agreement, as provided in Section 4.1, and Black Hills Energy shall purchase and own all Photovoltaic Energy and associated RECs produced by the CSG PV System.

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

3.1 CSG SO Representations and Warranties. CSG SO represents and warrants as follows:

(a) CSG SO is either the CSG Owner or is a CSG Subscriber Organization organized under C.R.S. § 40-2-127, and has been duly authorized by the CSG Owner to beneficially operate the CSG PV System and to issue subscriptions in the CSG PV System to CSG Low-Income Subscribers.

(b) CSG SO has been duly authorized to sell and to deliver to Black Hills Energy Photovoltaic Energy produced by the CSG PV System on behalf of all CSG Low-Income Subscribers having valid Subscriptions in the CSG PV System, the purchase price and full

consideration for which are the CSG Credits to be applied on the CSG Low-Income Subscribers' electric service bills in accordance with the CSG Tariff.

(c) CSG SO has the right and authority to sell all of the RECs associated with both subscribed and unsubscribed Photovoltaic Energy produced by the CSG PV System and delivered to Black Hills Energy at the Production Meter. The actual subscribed Photovoltaic Energy produced by the CSG PV System is sold and delivered to Black Hills Energy pursuant to Section 2.1 and Section 3.1(b).

(d) CSG SO has the right and authority to sell the unsubscribed Photovoltaic Energy produced by the CSG PV System to Black Hills Energy on behalf of the CSG Owner, the CSG Low-Income Subscribers and itself.

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

3.3 Requirements and Restrictions Applicable to CSG Low-Income Subscribers and Subscriptions. Except as specifically provided otherwise below, each of the conditions set forth in the subparagraphs of this Section 3.3 must be satisfied at all times during the Term of this Agreement and failure to do will constitute a material breach of this Agreement. 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 Low-Income Subscriber or Subscription that no longer satisfies the below conditions for qualification as a valid CSG Low-Income 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 SO in a manner that satisfies all such conditions.

(a) No CSG Low-Income Subscriber may own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy produced by the CSG 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 SO shall not own more than a 40 percent interest in the beneficial use of the Photovoltaic Energy or associated RECs produced by the CSG PV System.

(c) For each CSG Low-Income Subscriber, the Subscription shall supply no more than 120 percent of the average annual electricity consumption at the CSG Low-Income Subscriber's premise to which the Subscription is attributed, reduced by the amount of any existing retail renewable distributed generation at or attributed to such premises.

(d) The premises to which a Subscription is attributed by a CSG Low-Income Subscriber shall be a premises served by Black Hills Energy and shall be within the same county as the Solar Garden Site or in another county adjacent to the county where the Solar Garden Site is located, so long as the CSG Low-Income Subscriber's designated premises is within Black Hills Energy's retail electric service territory. If any CSG Low-Income 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 SO shall terminate such Subscription and, if CSG SO fails to do so, Black Hills Energy shall have the right to remove such Subscription on the CSG SO's behalf.

(e) All Subscriptions reflected in the CSG Allocation must be solely attributable to one or more CSG Low-Income Subscribers as defined in Sections 1.18 and 1.21.

(f) The primary business of any CSG Low-Income 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.

(g) For any CSG Low-Income Subscriber from non-profit affordable housing, all residents must meet the low-income definition in Section 1.21 and must be the beneficiaries of the CSG subscription.

(h) For any CSG Low-Income Subscriber from public authority housing, all residents must meet the low-income definition in Section 1.21 and must be the beneficiaries of the CSG subscription, and the public authority housing must receive electric usage bills directly from Black Hills Energy.

(i) The CSG Owner shall provide annual proof to Black Hills Energy that it operates the CSG PV System solely for the benefit of CSG Low-Income Subscribers, and at the maximum percentages two the two CSG Low Income Subscriber types specified in its RFP. The proof shall be either: (1) within the CSG Annual Report codified in Commission Rule 3665(e)(II), or (2) other written method as accepted by the Company, at its sole discretion, and as described by written amendment to this Agreement.

3.4 Requirements and Restrictions Applicable to the CSG 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 CSG PV System during the period it is not in compliance with any of such conditions.

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

(b) The CSG PV System shall have a capacity nameplate rating of 500 kW DC or less, but not below 50 kW DC minimum.



(c) The CSG PV System shall be located within Black Hills Energy's existing service territory, as defined pursuant to C.R.S. § 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 CSG 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 CSG PV System is no longer located within Black Hills Energy's existing service territory, by providing ten (10) days advance written notice to CSG SO.

3.5 Responsibility for Verification. The CSG SO shall be responsible for submitting to Black Hills Energy, complete and fully executed forms for each CSG Low-Income Subscriber in the CSG PV System, namely: (1) a "Low Income Verification" form; (2) a Low-Income Subscriber Agency Agreement; and (3) a "Consent to Disclose Utility Data" form.

3.6 Code Compliance. CSG SO shall be responsible for ensuring that the CSG 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 SO 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 under 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 CSG 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 CSG PV System is installed; (b) the CSG 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 CSG 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 SO and the CSG PV System has been interconnected with Black Hills Energy's electric distribution system pursuant to the Interconnection Agreement.

4.3 Escrow Fund and Deposit.

Prior to the execution of this Agreement, Black Hills Energy has been provided with both an escrow amount and a deposit amount pursuant to the terms of separate Escrow and Deposit Agreements.

(a) Escrow Fund. The amount of escrowed funds deposited directly with Black Hills Energy shall be refunded in accordance with the terms of the Escrow Agreement.

(b) Deposit. The Deposit will be refunded or forfeited in accordance with the terms of the Deposit Agreement.

4.4 Maintenance and Repair of CSG PV System. The CSG SO shall maintain the CSG PV System and the individual components of the CSG PV System in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the CSG PV System or any of the individual components of the system should be damaged or destroyed, the CSG SO shall provide Black Hills Energy written notice and promptly repair or replace the equipment to its original specifications, tilt and orientation at the CSG SO'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 required under this Agreement for Photovoltaic Energy or associated RECs produced 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 CSG 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 SO anytime during the period following the expiration of such ninety (90) days and before the CSG PV System has been made fully operational again.

4.5 Updating of Monthly Subscription Information. On or before five business days immediately preceding the first day of each Production Month, CSG SO shall provide to Black Hills Energy in writing any and all changes to the Monthly Subscription Information, in order to ensure that the CSG Low-Income Subscribers and CSG Allocation applicable to each such CSG Low-Income Subscriber's Subscription in the CSG PV System are complete and accurate with

respect to the Photovoltaic Energy and associated RECs produced by the CSG PV System during such Production Month. As of the fifth business day preceding the first day of 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 Low-Income 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 SO shall include additions and deletions to the CSG Low-Income Subscribers holding Subscriptions in the CSG PV System, the CSG Low-Income Subscriber's identifying information (e.g., account number and service address attributable to each Subscription) and the CSG Allocation for each CSG Low-Income 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 CSG PV System.

4.6 Subscription Limitations. CSG SO shall issue Subscriptions in the CSG 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 Low-Income Subscriber who is not an eligible retail electric customer of Black Hills Energy, such Subscription shall be deemed invalid and terminated. 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 Low-Income Subscriber to which such CSG Allocation is attributable no longer holds a valid Subscription in the CSG 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 SO.

4.7 Subscription Transfers. Subscriptions may be transferred between eligible CSG Low-Income Subscribers by reflecting such transfer in the Monthly Subscription Information through changes by CSG SO via written notice to Black Hills Energy. The CSG Low-Income 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.

4.8 Disclosure of Production Information. CSG SO acknowledges and agrees that, in order for Black Hills Energy to carry out its responsibilities in applying CSG Credits to CSG Low-Income 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 Low-Income Subscriber any and all production data related to the CSG PV System in its possession and information regarding the total CSG Credits applied by Black Hills Energy with respect to the CSG PV System and the amounts paid to CSG SO for unsubscribed Photovoltaic Energy and Renewable Energy Credits generated by the CSG PV System. Any additional detailed information requested by CSG Low-Income Subscriber shall be provided only upon CSG SO's consent in writing to Black Hills Energy.

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

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

4.11 Audits. Black Hills Energy reserves the right, upon thirty (30) days written notice, to audit CSG SO's subscriber and Subscription records and to inspect the CSG 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 CSG PV System, and CSG SO shall reimburse Black Hills Energy for the cost of installing the Production Meter. In addition, CSG SO will reimburse Black Hills Energy for the cost of the Production Meter and any remote communications equipment. Such reimbursement shall be due within thirty (30) days from the date a bill is presented to CSG SO by Black Hills Energy after the Production Meter is installed. If CSG SO 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 SO shall cause to be provided, and shall own, operate and maintain, at the CSG SO'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 CSG 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 SO 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 SO shall be required to pay an amount equal to the Company's fully loaded actual costs of labor and transportation ("Trip Charges"). 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 CSG 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 SO's payment of Trip Charges hereunder shall be due within thirty (30) days from the date a bill is presented to CSG SO by Black Hills Energy. If CSG SO 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 SO, as “Customer Generator,” 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. The Parties acknowledge and agree that the performance of their respective obligations with respect to the interconnection of the CSG 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 SO’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 SO and Black Hills Energy with respect to the Interconnection Agreement.

5.5 House Power. This Agreement does not provide for House Power. CSG SO 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 SO 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 SO’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 CSG 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 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 SO’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 SO 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 CSG 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 CSG PV System caused by climatic change, lightning, fire, ice storms, sabotage, vandalism caused by others despite reasonable efforts of CSG SO to secure and protect the CSG 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, material man, customer, or supplier of CSG SO, 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 CSG 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 SO's supplies, or that affect demand or price for any of Black Hills Energy's or CSG SO'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 either subscribed or unsubscribed Photovoltaic Energy or associated RECs under this Agreement except for actual production as measured by the metering provisions of this Agreement.

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

## **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 CSG PV System or any individual component equipment of the system. Black Hills Energy shall not be liable to the CSG SO 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 SO with respect to the production and sale of Photovoltaic Energy or RECs, and CSG SO acknowledges and agrees it should seek professional advice regarding those issues.

8.2 Indemnification by CSG SO. CSG SO 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 CSG PV System or any component equipment of the system, or CSG SO's administration of Subscriptions, the performance of its responsibilities under this Agreement or the performance of its responsibilities as either the CSG Owner or a CSG Subscriber Organization organized under C.R.S. § 40-2-127.

8.3 Insurance. The CSG SO at its own expense shall secure and maintain in effect during the Term of this Agreement liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 for each occurrence. Certificates of Insurance evidencing the requisite coverage and provision(s) shall be furnished to Black Hills Energy prior to the Date of Commercial Operation. A copy of any renewals shall be sent to Black Hills Energy's Authorized Operating Representative so that Black Hills Energy is always in possession of a current Certificate of Insurance.

**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: (a) continue to perform its obligations under the Agreement as changed; (b) seek to renegotiate the terms of this Agreement by providing written notice to the other party of its desire to renegotiate; or (c) 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 SO 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 SO to sell and to deliver the Photovoltaic Energy output of the CSG PV System and associated RECs to Black Hills Energy and the obligations of Black Hills Energy to accept and pay CSG SO as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 9.2 above.

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

## **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 or electronic 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 the CSG SO or the CSG Owner (if different from the CSG SO) without the prior written consent of Black Hills Energy, which consent shall not be unreasonably withheld. In no event shall any assignment by CSG SO become effective before a new CSG Low-Income Subscriber Agency Agreement has been entered into between CSG SO's assignee and each and every CSG Low-Income Subscriber.

10.3 Sharing of REC Information. By executing this Agreement, CSG SO 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 SO 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 SO's CSG 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 Garden Program Manager  
105 S. Victoria Ave  
Pueblo, CO 81003  
Email: [BHECSG@blackhillscorp.com](mailto:BHECSG@blackhillscorp.com)

If to CSG SO:

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or at such other address 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 CSG PV System and associated RECs from CSG SO, 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. The Parties are not relying on any representation not contained herein. 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.

**Solar Garden ID No.: BHE CSG 2018-06**

**CSG Subscriber Organization**

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

CSG Subscriber Organization Representative: \_\_\_\_\_

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

CSG Subscriber Organization Signature: \_\_\_\_\_

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

**CSG Owner (if different from CSG Subscriber Organization)**

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

CSG Owner Representative: \_\_\_\_\_

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

CSG Owner 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: \_\_\_\_\_

**Exhibit A**

**Solar Garden ID No.: BHE CSG 2018-06**

**DESCRIPTION OF SOLAR GARDEN SITE:**

**Exhibit B**

**LOW-INCOME SUBSCRIBER AGENCY AGREEMENT**

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

CSG Low-Income Subscriber Name: \_\_\_\_\_

CSG Low-Income Subscriber Retail Customer Account No.: \_\_\_\_\_

CSG Low-Income Subscriber Meter No.: \_\_\_\_\_

CSG Low-Income Subscriber Service Address: \_\_\_\_\_

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

CSG Low-Income Subscriber Mailing Address: \_\_\_\_\_

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

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

Solar Garden ID No: **BHE CSG 2018-06** \_\_\_\_\_

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

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

The undersigned CSG Low-Income Subscriber hereby authorizes \_\_\_\_\_ ("CSG SO"), and CSG SO hereby accepts the responsibility, to act as CSG Low-Income Subscriber's agent for purposes of selling to Black Hills/Colorado Electric Utility Company, LP d/b/a/ Black Hills Energy ("Black Hills Energy" or "Company") all of CSG Low-Income Subscriber's beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits ("RECs")<sup>4</sup> produced by, and delivered to Black Hills Energy from the CSG Photovoltaic Energy System ("CSG PV System") identified above, including full authority for CSG SO to enter into a long-term contract on behalf of CSG Low-Income Subscriber for such sale and to administer such contract, all pursuant to Black Hills Energy's Community Solar Garden Program and the Company's Community Solar Garden Service Tariff, found in its Electric Tariff ("CSG Tariff").

<sup>4</sup> "Renewable Energy Credit" or "REC" shall have the meaning set forth in Rule 3652(y), 4 *Code of Colorado Regulations* 723-3.

1. Duties of CSG SO Generally. CSG SO shall be responsible for issuing and managing the subscriptions of all CSG Low-Income Subscribers in the CSG 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 CSG PV System and delivered to Black Hills Energy at the Production Meter located at the CSG PV System site. CSG Low-Income Subscriber acknowledges that the CSG SO will retain the associated Renewable Energy Credits produced by the CSG PV System and will sell the associated Renewable Energy Credits separately to Black Hills Energy. In performing such functions, CSG SO shall be solely responsible for communicating directly to Black Hills Energy CSG Low-Income Subscriber's information concerning its subscription in the CSG PV System, including its beneficial interest in the Photovoltaic Energy produced by the CSG PV System. CSG Low-Income Subscriber also acknowledges that Black Hills Energy shall exclusively rely on such information as regularly and timely communicated from the CSG SO for the purpose of calculating the CSG Credit that will be applied by Black Hills Energy and reflected on CSG Low-Income Subscriber's subsequent electric service bills as compensation for Black Hills Energy's receipt of CSG Low-Income Subscriber's share of the Photovoltaic Energy produced by the CSG PV System, in accordance with the CSG Tariff.

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

3. Limitation of Agency. This Agency Agreement shall only serve to authorize CSG SO to act as CSG Low-Income Subscriber's agent with respect to CSG Low-Income Subscriber's beneficial interest in the Photovoltaic Energy produced by the CSG PV System and delivered to Black Hills Energy to the extent that CSG Low-Income Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the CSG PV System in accordance with C.R.S.

§ 40-20-127, the effective rules and regulations promulgated thereunder by the Commission, and the CSG Tariff.

4. Term of Agency and Termination.

(a) This Agency Agreement shall become effective upon its execution by both CSG Low-Income Subscriber and CSG SO and shall continue in effect for so long as a valid and existing contract between Black Hills Energy and CSG SO for the purchase and sale of such Photovoltaic Energy and the associated RECs shall continue in effect.

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

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

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

6. Consent to Disclose Account Information. CSG Low-Income Subscriber shall provide, or cause to be provided, 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 Low-Income Subscriber's past and present electric usage at the Service Address(es) identified above in order for CSG SO independently to verify the extent of CSG Low-Income Subscriber's eligibility to hold a subscription in the CSG PV System pursuant to C.R.S. § 40-20-127, the effective rules and regulations promulgated thereunder by the Commission, and the CSG 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 Low-Income Subscriber Agency Agreement was duly executed by the undersigned authorized representatives of CSG Low-Income Subscriber and CSG SO.

**CSG SUBSCRIBER ORGANIZATION**

**CSG LOW-INCOME SUBSCRIBER**

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

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

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

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

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