



Black Hills 2021 CSG RFP Program

SUBSCRIBER AGENCY AGREEMENT

FOR BLACK HILLS ENERGY COMMUNITY SOLAR GARDEN (CSG) SERVICE

CSG Subscriber Name: Fremont County (Debbie Bell)

CSG Subscriber Retail Customer Account No.: See Attachment A

CSG Subscriber Meter No.: see Attachment A

CSG Subscriber Service Address: See Attachment A

CSG Subscriber E-mail Address: Debbie.bell@fremontco.com

CSG Subscriber Mailing Address: 615 Macon Ave. Room 105
Canon City, CO 81212

CSG Subscriber Telephone No: (719) 276-7300 (Primary) _____ (Alt.)

CSG Subscriber Organization Name: Fremont County

Solar Garden ID No: TBD

Name and Location of Solar Garden: BHE CSG 3 LLC Otero, CO

CSG Subscriber's Initial Subscription Share (in Watts or kilowatts ["kW"]): 599 Watts [kW]

The undersigned CSG Subscriber hereby authorizes BHE CSG 3 LLC ("CSG SO"), and CSG SO hereby accepts the responsibility, to act as CSG Subscriber's agent for purposes of selling to Black Hills/Colorado Electric Utility Company, LLC d/b/a/ Black Hills Energy ("Black Hills Energy" or "Company") all of CSG Subscriber's beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits ("RECs")¹ produced by, and

¹ "Renewable Energy Credit" or "REC" shall have the meaning set forth in Rule 3652(y), 4 Code of Colorado Regulations 723-3.

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 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”).

1. Duties of CSG SO Generally. CSG SO shall be responsible for issuing and managing the subscriptions of all CSG 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 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 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 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 Subscriber’s subsequent electric service bills as compensation for Black Hills Energy’s receipt of CSG 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 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 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 CSG 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 SO, 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 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 Subscriber hereby authorizes Black Hills Energy to disclose and release to CSG SO any and all information reflected on CSG 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 Subscribers in the CSG PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize CSG SO to act as CSG Subscriber’s agent with respect to CSG 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 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 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 Subscriber upon Black Hills Energy's receipt of notice that CSG Subscriber's subscription in the CSG 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 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 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 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 CSG PV System through CSG SO.

6. 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 SO independently to verify the extent of CSG 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 Subscriber Agency Agreement was duly executed by the undersigned authorized representatives of CSG Subscriber and CSG SO.

CSG SUBSCRIBER

CSG SUBSCRIBER ORGANIZATION

Fremont County

By Debbie Bell

By _____

Title: Commissioner, Chairman

Title: _____

Date: 12/05/2022

Date: _____

Attachment A

BHE Account No.	Subscriber Meter No.	Service Address
6272538450	EL 12611915	100 Justice Center Rd. Canon City, CO 81212
6272538450	HW 32015734	6655 Hwy 115 Florence, CO 81226
6272538450	HW 27096486	60298 US-50 Penrose, CO 81240

Colorado Community Solar Subscription Agreement

Seller Name	SunCentral LLC(a wholly owned subsidiary of Pivot Energy)	Solar System Name:	BH CSG 3 LLC
Entity Name:	Fremont County	Location:	Pueblo, CO
Entity Representative:	Debbie Bell		
Representative Role:	Chair, Fremont County Commissioners	First year production estimate	2,065 kWh/kW(DC)
Utility	Black Hills Energy	Subscription Size	Up to 599 kW(DC)

1. Introduction.

This Community Solar Subscription Agreement (this “**Agreement**”) sets forth the terms and conditions under which you subscribe through SunCentral to a portion of the electric generating capacity of a utility-approved Community Solar System (the “**System**”) for the Term of this Agreement in order to receive Bill Credits from the Utility so as to decrease your utility costs. “**Utility**” means the utility service provider listed under Appendix A. In this Agreement, you may be also referred to as “you”, “your” or “Customer”, and SunCentral, together with its affiliates, successors and assigns, may also be referred to as “the Company” or “we” or “us” or “our”. Customer and the Company shall collectively be referred to herein as the “Parties” and individually as a “Party”.

This Agreement, with the Effective Date as of the date of the last signature, is a legally binding agreement with disclosures (attached, hereto as Appendix E) required by the Utility, so please read everything carefully. If you have any questions regarding this Agreement, please contact Customer Support at 888-734-3033 x702.

2. General Information.

As detailed below, the Utility currently participates in the Solar*Rewards Community program whereby the Utility is required to issue Bill Credits for generated solar electricity pursuant to the terms of the Tariff and program regulations (the “**Program**”). “**Bill Credits**” means compensation for the electricity produced in any given month by the System. “**Tariff**” means the tariff from the Utility to implement the Program, as approved by the Colorado Public Utilities Commission, together with any subsequent amendments and approvals thereto. This Program requires the Utility to issue Bill Credits on the electric bills for certain customers (the “**Bill Credits**”) in exchange for receipt of solar electricity from a qualifying Community Solar System.

We have constructed or intend to construct a Utility-approved Community Solar System as set forth in the Program, at the location set forth in Appendix A (the “**System**”). We will interconnect the System with the Utility pursuant to the terms of the Tariff, generator interconnection agreement, the Program, or other agreements required to be executed with the Utility (collectively, the “**Interconnection and Credit Agreements**” or “**ICA**”). Once the System begins to generate electric energy on a commercial basis (the “**Commercial Operations Date**” or “**COD**”) we shall provide you further description of such System and notice of assignment to it on or shortly after by updating Appendix A with the Commercial Operations Date, System Location, System’s total nameplate capacity, Customer’s Capacity, Customer’s Portion, and the Estimated Initial Annual Customer’s Solar Output. Such updated Appendix A shall be added to this Agreement without the need for additional consent or signature of the Parties in accordance with Section 2. By executing this Agreement, you agree to allow us to assign this Agreement to any eligible solar system developed or managed by us as described (or to be described at a future date) in Appendix A.

Under this Agreement, you will subscribe to a portion of the electric generating capacity of the System during the Term of this Agreement in order to receive Bill Credits from the Utility on your electric bill (the “**Solar Interest**”).

3. Term.

- a. Term. The term of this Agreement shall commence on the Effective Date and continue for ten (10) years (the “**Initial Term**”). This Agreement will automatically renew for successive terms of five (5) years (each, a “**Renewal Term**”) unless either Party decides that it does not wish to renew this Agreement before the expiration of the Initial Term or any Renewal Term, as applicable, by notifying the other Party in writing at least one hundred eighty (180) days before the completion of the Initial Term or Renewal Term, as applicable. The Initial Term and any Renewal Term are collectively referred to as the “**Term**.” Notwithstanding the foregoing, this Agreement shall terminate after twenty years from the System’s Commercial Operations Date unless earlier terminated in accordance with this Agreement, in which case the Term shall expire on the effective date of such early termination.

- b. **Initial Accrual of Bill Credits.** The Utility shall begin allocating Bill Credits to you upon the date (the "**Eligibility Date**") by which all of the following shall have occurred: (1) the Commercial Operations Date and (2) the Utility has added you to the Utility's Bill Credit allocation records which we update with the Utility from time to time to allocate Bill Credits obtained from the Utility in respect to solar electricity delivered to the Utility Meter located at the System and (3) you have been approved by the Utility, see Section 4.

4. Acknowledgments Regarding the Program.

- a. **Program Limitation and Requirements.** The Program imposes certain requirements and limits on participation in the Program (such limits, the "**Program Limitation**") as further described in Appendix C and incorporated into this Agreement.
- b. **Your Subscription is Contingent on Allocation of Bill Credits by Utility.** Your subscription is contingent upon and subject to the Utility's acceptance and allocation of Bill Credits to your Customer Account. "**Customer Account**" means Customer's account with the Utility for a location served by the Utility, and which must be in a rate class that is eligible under the Program. During the Term of this Agreement, (i) if for any reason the Utility refuses to allocate a portion or all of the Bill Credits to your Customer Account on a temporary basis, this Agreement shall remain in full force and effect, but we shall promptly refund to you any amount paid to us by you for such Bill Credits which the Utility refused to credit to your Customer Account, and (ii) if for any reason the Utility refuses to allocate the Bill Credits to your Customer Account on a permanent basis, either Party may terminate this Agreement by written notice to the other Party. Notwithstanding anything to the contrary, this Section 4(b) does not apply to the extent that the reason that the Utility refuses to allocate Bill Credits to you is a result of you failing to pay your Utility bill or your breach of this Agreement.
- c. **Additional Requirements.** You acknowledge that, in connection with this Agreement, you must first satisfy our credit requirements, which are subject to change and not contained in this Agreement. We may terminate this Agreement if we determine that you are ineligible to participate in the Program and/or fail to satisfy our credit requirements.

5. Customer's Subscription.

- a. **Capacity Subscribed.** Commencing on the Eligibility Date and continuing throughout the remainder of the Term, you agree to subscribe to a Capacity sufficient to produce kWh equal to approximately 100% of your historic twelve-month electric energy usage. After verifying your prior twelve-month usage or estimated usage with the Utility, we shall notify you of your Capacity within the updated Appendix A. "**Capacity**" means the amount of capacity you subscribed to under this Agreement as detailed under Appendix A expressed in terms of kW-DC.
- b. **Determination of Solar Output.** You acknowledge the measurement of the System Solar Output shall be based upon readings at the Utility Meter. Each month during the Term of this Agreement, the Utility will record the amount of solar electricity generated that month at the System and delivered to the Utility Meter, if available (the "**System Solar Output**"). The Utility will then multiply the System Solar Output by your Portion to arrive at the "**Customer Solar Output**" for that month in kWh. Customer Solar Output means the portion of the System production allocable to the Customer measured in kilowatt hours AC or "kWh." The month over which such solar electricity is measured is referred to herein as the "**Production Month.**" "**Portion**" means your Capacity expressed in a percentage of the total nameplate capacity of the System. Your Portion shall be updated in Appendix A after the Commercial Operations Date.

Calculation of Bill Credits. Bill Credits are calculated solely by the Utility based upon the terms and conditions of the Program. You acknowledge and agree that our sole obligation regarding payments to you is to request and use commercially reasonable efforts to require the Utility to deliver Bill Credits. We will provide the Utility with your information so that the Utility can post the appropriate amount of Bill Credits to your electric bill, pursuant to the allocations shown in the Utility's Bill Credit allocation records. Bill Credits to be applied on your electric bill are calculated using the Bill Credit Rate multiplied by your Customer Solar Output based upon the reading. "**Bill Credit Rate**" means the applicable value of solar rate in effect at the time of energy generation (in \$/kilowatt-hour) and may be periodically revised by the Utility based upon variations in the Utility's rate components from time to time, that is applicable to your service classification. If in any given month Subscriber's rate as set forth in Appendix B exceeds the rate used by the Utility for that same month to calculate Subscriber's Bill Credit Rate, then Subscriber's Rate will be reduced to an amount equal to the Bill Credit Rate; provided, however, the Rate will never be lower than the year one rate (as shown in Appendix B).

If at any time after a reduction, the Bill Credit Rate increases, then the rate will increase to equal the Bill Credit Rate; provided, however, the rate will never exceed the rate set forth in Appendix B and that corresponds to the year in which the increase occurs. The parties acknowledge and agree the percentage amount of an increase may exceed the annual percentage escalator that was used to calculate the escalation of the rates set forth in Appendix B, but only to the extent necessary to cause the rate to equal the Bill Credit Rate, and not to exceed the rate set forth in Appendix B that corresponds to the year in which the increase occurs.

You understand that (i) the Bill Credits received by you for a particular Production Month will be reflected on your statement from the Utility as a monetary credit amount and not as an electricity quantity; and (ii) such Bill Credits will be reflected on your monthly invoice according to the Utility's billing cycle, and there may be a delay of up to three months after the Production Month in which the Bill Credits appear on your Utility electric bill.

- c. **Title: Environmental Attributes and Tax Incentives Excluded.** You shall not be entitled to any ownership interest in, and as between you and us, we shall have title to, the System and all solar panels. You acknowledge and agree that your Solar Interest does not include any Environmental Attributes associated with the System, and you agree that you will not claim any Environmental Attributes. "**Environmental Attributes**" means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) all environmental and renewable energy attributes and credits, "**Renewable Energy Credits**" of any kind and nature resulting from or associated with the System and/or its electricity generation, (ii) government financial incentives, (iii) greenhouse gas offsets, (iv) investment tax credits (including any grants or payments in lieu thereof), tax deduction, incentives or depreciation allowances established under any federal or state law, and (v) other allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar energy generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the System and/or its electricity generation.
- d. **Taxes.** You shall be responsible to either pay or reimburse us for any applicable sales, use, import, excise, value added, or other taxes or levies (other than our income taxes) associated with this Agreement. We shall be responsible for any and all taxes assessed on the generation, sale and delivery of the electricity from your Solar Interest.
- e. **Distribution of Excess Bill Credits.** "**Excess Bill Credits**" means additional Bill Credits allocated to your Customer Account by the Utility, which shall temporarily increase the regular Bill Credit distribution associated with your Customer Solar Output. We may at any time direct the Utility to apply Excess Bill Credits to your Customer Account if not in violation of Program Limitations.

6. **Payment**

- a. **Bill Credit Payment.** Except as provided in Section 6(c) below, the Bill Credit Payment for each month is equal to the kWh of Solar Energy produced and delivered to the Utility during a production month, multiplied by the price per kWh in effect during the year in which the production month occurs shown on the price list on Appendix B, including excess bill credits if applicable under Section 5(f). You agree to pay the full Bill Credit Payment within thirty (30) days after the date of our invoice.
- b. **Invoice for Bill Credit Payment.** Each month following the Eligibility Date (except as provided in Section 6(c) below), you will electronically receive a monthly statement from us showing the Bill Credit Payment amount due from you on or about the 60th day after the end of the Production Month upon which such Bill Credit Payment is based including any previous balance and late fee, if applicable (the "**Invoice**"). The Invoice shall be based on readings from the Utility Meter, if available. In the event the Utility does not provide Utility Meter readings at all or on a timely basis, the Invoice shall be based on readings at the System Meter. "**System Meter**" means our electric meter located at the System and used to measure the solar electricity generated at the System. You shall pay all invoiced amounts owed to us within thirty (30) days of the date of the Invoice. All invoices shall be paid by the Company-approved payment method you select. Once you select a Company-approved payment method, you shall execute the applicable Payment Authorization Form and provide us the necessary payment information. You agree to inform us of any changes to your payment information within ten (10) days of any change. Any late payments shall be subject to late fees. If your payment is late in accordance with this Agreement, you shall owe the lesser of (i) 2% per month on the portion of your balance that is more than 30 days past due and (ii) or the maximum amount as allowed by applicable law as a "**Late Fee**".
- c. **Records and Audits.** Each Party shall keep, for a period of not less than three (3) years after the date of each Invoice, records sufficient to permit verification of the accuracy of billing statements, charges, computations and payments reflected on such Invoice. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to such Invoice during the other Party's normal business hours. We shall, at your request (such request to not occur more than annually), provide documentation of the amount of electricity generated by the System and/or the calculation of the Bill Credit Payments and Bill Credit calculations under Consolidated Billing, as applicable, provided that you provide us with your Utility bills for the time in question.

7. Customer Information.

Within ten (10) days of any request therefor by the Utility or us, you will provide to the Utility or us all applications, documentation and information required by the Utility to evaluate your qualification and eligibility for participation in the Program. You further agree to execute the Consent to Disclose Utility Customer Data set forth in Appendix E. We may use your customer information you provide in Appendix A for reporting purposes to governmental entities and as outlined in Appendix E. To help us carry out the terms of this Agreement and interact with the Utility in regard to requirements of the Program, you agree that we have permission to submit to the Utility and/or obtain from the Utility your customer information listed in Appendix A, and usage information.

8. Changes in Location and Capacity.

a. Change in Location.

- i. **Advance Notice.** You agree to provide us with ninety (90) days advance notice if you are moving, intend to close your Utility account, or of any other change which may cause you to not be the Utility's customer at the Utility Service Location.
- ii. **New Eligible Service Location within same Utility Service Territory.** If you change your Utility Service Location, this Agreement shall continue for the new location if: (i) the billing meter at the new premise is within the same service territory as the Utility serving the associated System or another one of our facilities that has available capacity, and (ii) you are established as the customer of record for electric service with the Utility at the new premises. You shall take all steps and provide all information required by the Utility under the Program to substitute your new service location as the Utility Service Location under this Agreement, and this Agreement shall continue in effect. We shall update the Utility's Bill Credit allocation form. After the Utility has verified eligibility and accepted the updated Bill Credit allocation form, you will continue to receive Bill Credits in accordance with the terms of this Agreement. We shall update Appendix A with your new Utility Service Location, without the need for additional consent or signature.
- iii. **Other Termination of Utility Service.** If you cease to be a Utility customer for electric service at the Utility Service Location and your new service location is not eligible to participate in Program in our System, we may terminate this Agreement under Section 10(e).

b. **Decrease in Capacity.** In accordance with Program Limitations, we may decrease your Capacity in the event your Capacity exceeds your actual electrical usage from time to time.

c. **Transfer to a Replacement Customer.** You may be permitted to transfer all of your Capacity to a replacement customer as long as (i) such transfer is made in compliance with all terms and conditions of the Program, including Program Limitations; (ii) the replacement customer is eligible under the Program; (iii) you have no outstanding obligations in connection with your Customer Account or payments due under this Agreement; and (iv) you obtain our prior written consent, which consent may be withheld in our sole discretion. As a condition of any such transfer, you and the proposed transferee shall provide us with all requested documentation and information related to the transfer, and confirmation of qualification by the Utility to participate in the Program. Upon execution of a new agreement with the replacement customer, this Agreement will terminate.

9. Your General Agreements.

In connection with this Agreement you represent, covenant, and agree that:

- a. The Customer Information you provide in Appendix A is accurate and that you are eligible to participate in the Program.
- b. You agree to keep your Utility account for the Utility Service Location in active status and pay your electric bill on time. You agree to make no claim against us or our affiliates or assigns for amounts which may be payable to you from the Utility under the Program or in connection with this Agreement.
- c. You have not granted or placed or allowed others to place any liens, security interests, or other encumbrances on the Bill Credits, and you will not do so during the Term of this Agreement.

10. Termination.

- a. **Termination of Program.** In the event the Utility ceases to offer the Program or a comparable substitute, or in the event that there is a change in the Program such that you are no longer eligible to participate in the Program, then either Party may terminate this Agreement after you cease to receive Bill Credits.
- b. **Termination Based on Lease.** If the lease where the System is located is terminated for any reason and not subsequently reinstated, this Agreement will terminate at such time without liability to either Party.
- c. **Termination Based on Our Default.** You may terminate this Agreement if we materially fail to fulfill any of our obligations

as expressed in this Agreement, and such failure continues for more than sixty (60) days after written notice from you of such failure. To terminate this Agreement in accordance with this Section, you may not have any uncured material default at the time of such termination.

- d. **Termination Based on Your Default.** You will be in material default of this Agreement and we may terminate this Agreement for your material default should any of the following occur:
- i. You fail to make any payment when due under this Agreement and such failure continues for a period of thirty (30) days after written notice from us.
 - ii. Any of the representations set forth in this Agreement shall be or become untrue, or you fail to fulfill any of your other material obligations as expressed in this Agreement, and such failure continues for more than thirty (30) days after written notice to you of such failure.
 - iii. You fail to pay your Utility bills on a timely basis, your Utility account is closed without providing us notice as set forth in this Agreement, or you assign or transfer this Agreement without our prior written consent.
 - iv. You become insolvent, file for bankruptcy, or make an assignment for the benefit of your creditors, or an involuntary bankruptcy petition is filed against you.
- e. **Termination Prior to Operation.** Prior to the Commercial Operations Date, either Party may terminate this Agreement without penalty if we have not achieved the Commercial Operations Date for the System or the System fails to qualify as a Community Solar System in accordance with the Tariff within twenty-four (24) months after the Effective Date; provided that such thirty-six month period shall be extended on a day-to-day basis for any Force Majeure or action or inaction on the part of the Customer or Utility.
- f. **Force Majeure.** “**Force Majeure**” means any event or circumstance not within the reasonable control of the Company which precludes the Company from carrying out, in whole or in part, its obligations under this Agreement. If a Force Majeure event occurs, the Company shall not be deemed to be in default during the Force Majeure event, provided that: (i) the Company gives you written notice within thirty (30) days describing the occurrence and the anticipated period of delay; (ii) no obligations of the Party which were to be performed prior to the Force Majeure shall be excused; and (iii) the Company shall use commercially reasonable efforts to remedy the Force Majeure. If any Force Majeure lasts longer than 90 days, and the Company determines in good faith that such Force Majeure substantially prevents, hinders or delays the Company’s performance of any of its obligations, then either Party may upon written notice terminate the Agreement without further liability, except that neither Party shall be relieved from any payment obligations arising under this Agreement prior to the Force Majeure.
- g. **Effect of Termination.** Upon termination of this Agreement for any reason, (i) we shall remove you from the Utility’s Bill Credit allocation records upon the next update to the Utility, which may take up to six (6) months, (ii) we shall have no further obligation to deliver, and you shall have no further obligation to subscribe to, any Bill Credits from us, provided, however, (a) that you shall pay us the Bill Credit Payments with respect to any Bill Credits that have or may continue to be allocated to you by the Utility until the Bill Credit allocation records are updated and (b) with respect to Production Months with Consolidated Billing, you shall repay to us the net amount of Bill Credits you receive on your Utility account until we can find a replacement customer and the Utility accepts the updated Bill Credit allocations. In connection with the foregoing sentence, both Parties agree to execute any documents as may be reasonably required by the Utility. Subject to the limitations set forth in this Agreement, each Party reserves and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement.

11. Dispute Resolution.

- a. **Complaints.** For any concerns or complaints regarding this Agreement, please contact us at 888-734-3033, x702. We shall acknowledge such complaint within two (2) days of our receipt and respond within fourteen (14) days thereof whether in writing or by phone call. We shall keep a record of all customer concerns or complaints.
- b. **Dispute Resolution.** Each party agrees that to expedite and control the costs of disputes, the resolution of any dispute relating to this Agreement (“**Dispute**”) will be resolved according to the following procedures: (1) unless otherwise agreed in writing, the parties agree to continue to perform each of our respective obligations under this Agreement during the course of the resolution of the Dispute, then (2) each party agrees to first try to informally resolve any Dispute. Accordingly, neither party will start a formal proceeding for at least forty-five (45) days after notifying the other in writing of the Dispute. Each party agrees to send our notice to the billing address set forth on the first page of this Agreement, then (3) if, after the informal dispute resolution process set forth in Subsection (2) above does not result in a resolution of the dispute, the parties

shall be free to seek any available relief, then (4) to the fullest extent permitted by applicable law, the Parties hereby unequivocally waive the right to a jury trial of any matter related to this Agreement.

- c. Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the State of Colorado without regard to principles of conflicts of law.

12. Notices.

In the event that any notice or other communication is required or permitted to be given hereunder, such notice or communications will be in writing and may be delivered in person or sent by certified mail, overnight courier, sent electronically to the address of the addressee as specified below. Except as otherwise provided, all such notices or other communications will be deemed to have been duly given and received upon receipt.

To Us: SunCentral
1750 15th Street., Ste. 400
Denver, CO 80202

To You: Debbie Bell, Chair
615 Macon Ave. Room 105
Canon City, CO 81212

We may, at our option, engage a third-party service provider to manage our obligations and communications pursuant to this Agreement. Any notice, consent or other communication from such third-party provider shall be as effective as if provided directly by us.

13. Additional Agreements.

- a. Confidentiality. You agree to keep the terms of this Agreement in strictest confidence and trust and to not disclose the terms hereof to any other entity or person or use, disseminate, or otherwise distribute any such information for your benefit or for the benefit of another, except for the limited purpose of facilitating the business relationship with us and the transactions contemplated herein or as required by law.
- b. Service Contract. Your community solar subscriber benefits under this Agreement, including the Bill Credits related to your Solar Interest, will be treated as a service contract under Internal Revenue Code Section 7701(e), and its various subparts.
- c. DISCLAIMERS OF WARRANTIES: WE DO NOT WARRANT OR GUARANTEE ANY MINIMUM PRODUCTION, SOLAR OUTPUT, OR BILL CREDIT AMOUNT. DURING THE TERM, YOUR ALLOCATION OF BILL CREDITS MAY VARY DUE TO WEATHER CONDITIONS, OUTAGES AT THE SYSTEM OR ON THE UTILITY GRID, OR FOR OTHER REASONS. WE DO NOT SELL, TRANSMIT OR DISTRIBUTE SOLAR ELECTRICITY TO YOU UNDER THIS AGREEMENT. WE DO NOT PROVIDE YOU WITH OWNERSHIP OF, OR ANY INTEREST IN, ANY SOLAR PANELS, UTILITY INCENTIVES, TAX INCENTIVES, ENVIRONMENTAL ATTRIBUTES, OR RENEWABLE ENERGY CREDITS UNDER THIS AGREEMENT, ALL OF WHICH WILL BE OWNED BY US AND USED BY US AS WE MAY DETERMINE FROM TIME TO TIME. WE DO NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF THE SYSTEM OR ANY PART THEREOF. WE DO NOT REPRESENT OR WARRANT THAT THERE WILL BE NO CHANGES TO THE TARIFF OR THE PROGRAM OR THE BILL CREDIT RATE, OR THAT THE UTILITY WILL NOT MAKE ANY CORRECTIONS OR ADJUSTMENTS TO METER READINGS. WE DO NOT REPRESENT OR WARRANT THAT ANY CHANGE TO STATE OR FEDERAL LAW OR CHANGES TO THE UTILITY TARIFF OR THE PROGRAM WILL NOT ADVERSELY AFFECT YOU OR WILL NOT CAUSE YOU TO BE INELIGIBLE FOR THE PROGRAM. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ANY AUTHORIZED REPRESENTATIVE OF THE COMPANY SHALL CREATE A WARRANTY. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, WE DO NOT MAKE ANY WARRANTY OR GUARANTEE TO YOU, EXPRESS, IMPLIED, STATUTORY, COMMON LAW OR OTHERWISE, AND ASSUME NO OTHER LIABILITIES, WHETHER IN CONTRACT OR IN TORT, WITH RESPECT TO THE SUBJECT MATTER HEREOF OR IN CONNECTION HEREWITH, AND YOU HEREBY DISCLAIM, WAIVE AND RELEASE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED OR IMPOSED BY LAW INCLUDING ANY WARRANTY OF MERCHANTABILITY AND ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THESE LIMITATIONS CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT.
- d. LIMITATION ON DAMAGES: Notwithstanding any other provision of this Agreement to the contrary, the entire liability

of either Party to the other for any and all claims of any kind arising from or relating to this Agreement, including any causes of action in contract, tort, strict liability or otherwise, will be limited to direct actual damages only, subject in all cases to an affirmative obligation of a Party to exercise commercially reasonable efforts to mitigate its damages. Notwithstanding the foregoing, our liability to you will in no event exceed the amount paid by you to us under this Agreement in excess of the Bill Credits you have received under this Agreement. We shall have the right to set-off and net against any amounts owed to us by you under this Agreement.

WITHOUT LIMITING THE FOREGOING, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST OPPORTUNITIES OR LOST PROFITS.

- e. **Assignment.** You may not assign this Agreement nor assign or transfer the Bill Credits. We may assign this Agreement, or any of our rights, duties, or obligations under this Agreement, to another entity or individual, including any affiliate, whether by contract, change of control, operation of law, collateral assignment or otherwise, without your prior written consent. We may in our sole discretion, from time to time, transfer you to another affiliated facility, provided that you receive similar rights and benefits as hereunder. We shall provide you with written notice of such transfer and an updated Appendix A with the new System information. Such updated Appendix A shall be deemed to be added to this Agreement and such transfer may be made without the need for additional consent or signature of the Parties.
- f. **Survival.** In the event of expiration or early termination of this Agreement, the following sections shall survive: Sections 4, 10, 11, 12, and 13.
- g. **Entire Agreement.** This Agreement, together with its appendices and exhibits, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.
- h. **Severability.** Should any terms of this Agreement be declared void or unenforceable by any arbitrator or court of competent jurisdiction, such terms will be amended to achieve as nearly as possible the same economic effect for the parties as the original terms and the remainder of the Agreement will remain in full force and effect.
- i. **No Partnership.** Nothing contained in this Agreement will constitute either Party to this Agreement as a joint venturer, employee, or partner of the other, or render either Party to this Agreement liable for any debts, obligations, acts, omissions, representations, or contracts of the other, including without limitation your obligations to the Utility for electric service.
- j. **Amendments; Binding Effect; Waiver.** Except as otherwise permitted in this Agreement, this Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by all of the Parties to this Agreement or their respective successors in interest. This Agreement inures to the benefit of and is binding upon the Parties and each of their respective successors and permitted assigns. No waiver of any provision of this Agreement will be binding unless executed in writing by the Party making the waiver.
- k. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or PDF transmission will be deemed as effective as delivery of an originally executed counterpart.
- l. **Further Assurances.** From time to time each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement. No Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

14. Right to Cancel.

You, the buyer, may cancel this transaction at any time prior to **midnight of the third business day** after the Effective Date. See the attached notice of cancellation form (attached hereto as Appendix D) for an explanation of this right.

15. Non-Appropriation Event.

SunCentral acknowledges and agrees that in accordance with Colorado constitutional restrictions, Customer has appropriated funds necessary to satisfy the payments that are required to fulfill its obligations under this Agreement for the initial year of the term of this Agreement. The payment of any compensation due under this Agreement for any year beyond the first year provided for herein is contingent upon annual appropriation of funds in accordance with applicable law. During the Term of this

Agreement, you agree in good faith that your staff will include the amounts to become due under this Agreement in your budget request for each fiscal year for funding your energy costs.

- A. In any fiscal year, your failure to make an appropriation for the purchase of electricity from any source at any of your locations for a future fiscal year, including the encumbrance under this Agreement will be a non-appropriation event (a "Non-Appropriation Event"). If a Non-Appropriation Event occurs, you agree to assign your Production Capacity to us. We will have the right to retain your Production Capacity, and the Bill Credits and R.F.C.s associated with your Production Capacity, for the duration of the Non-Appropriation Event. You will not have the right to receive Bill Credits during the occurrence of a Non-Appropriation Event.
- B. Termination. If a Non-Appropriation Event occurs, we have the right in our sole discretion to terminate this Agreement, without further obligation by either party. You agree to assign your interest in your Production Capacity to us upon termination of this Agreement. If a Non-Appropriation Event occurs and we do not terminate this Agreement, then we acknowledge and agree that for the duration of that Non-Appropriation Event you will have no financial obligations under this Agreement.
- C. Transfer of Production Capacity. We may transfer all or a portion of your Production Capacity to another customer for the duration of a Non-Appropriation Event.
- D. Budget Requests. Unless we choose to terminate this Agreement for a Non-Appropriation Event, your staff will in good faith continue to include the amounts to be paid to SunCentral pursuant to this Agreement in each subsequent fiscal year of the Term in your budget request for funding of your energy costs for each fiscal year, and if an appropriation for such amounts is made for a future fiscal year our respective obligations under this Agreement may be reinstated in our sole discretion. You will not be liable for any Monthly Payment during the respective fiscal year associated with the Non-Appropriation Event. If you make ten (10) successive annual requests to include the amounts to be paid to SunCentral pursuant to this Agreement that are denied, you will no longer be required to make further annual appropriation requests under this Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below.

SunCentral LLC

Signature:

Name: Brit Gibson

Title: SVP, Client Solutions

Date:

Fremont County

Signature: 

Authorized Signer: Debbie Bell

Title: Chair, Fremont County Commissioners

Date:

List of Appendices to Agreement

- Appendix A: Customer and System Information
- Appendix B: Contract Payment Schedule
- Appendix C: Program Limitations
- Appendix D: Right to Cancel
- Appendix E: Consent to Disclose Utility Customer Data

Appendix A

Customer and System Information

(This Appendix will be completed by us and an updated copy of this Appendix will be provided upon the later of (i) the Commercial Operations Date and (ii) thirty (30) days after the Effective Date of this Agreement.)

Customer: Fremont County
615 Macon Ave. Room 105
Canon City, CO 81212

Contact: Debbie Bell
(719) 276-7300
Debbie.bell@fremontco.com

Utility: Black Hills Energy

Utility Accounts: Acct # 6272538450 Premise/Meter # EL 12611915 Address: 100 Justice Center Rd. Canon City, CO 81212

Acct # 6272538450 Premise/Meter # HW 32015734 Address: 6655 Hwy 115 Florence, CO 81226

Acct # 6272538450 Premise/Meter # HW 27096486 Address: 60298 US-50 Penrose, CO 81240

Subscription Capacity: Up to 599 kW(DC)

System: BH CSG 3 LLC

System Company: TBD – Will be finalized at project assignment

System Capacity: TBD – Will be finalized at project assignment

Commercial Operations Date: TBD – Will be finalized at project assignment

Appendix B

Contract Payment Schedule

Year	Subscriber Rate (\$ / kWh)
1	\$0.07450
2	\$0.07450
3	\$0.07450
4	\$0.07450
5	\$0.07450
6	\$0.07450
7	\$0.07450
8	\$0.07450
9	\$0.07450
10	\$0.07450
11	\$0.07450
12	\$0.07450
13	\$0.07450
14	\$0.07450
15	\$0.07450
16	\$0.07450
17	\$0.07450
18	\$0.07450
19	\$0.07450
20	\$0.07450

Appendix C

Program Limitations and Requirements.

- a. **Program Limitation.** The Program Limitations include the following: (1) your Capacity shall not exceed an amount sufficient to produce kWh in excess of one-hundred twenty percent (120%) of your electrical energy consumption during the most recent 12-month billing period, (2) your Capacity must produce a minimum of 1,000 kWh per year, and (3) your Utility Service Location must be within the Utility service territory and the county or an adjacent county in which the System is located. You agree that the Estimated Initial Annual Solar Output from your Capacity as set forth in Appendix A shall not exceed the Program Limitation. **“Estimated Initial Annual Solar Output”** means the Solar Output estimated to occur during the 12-month period following the Commercial Operations Date. You also acknowledge that your participation (or the participation of others at the same Utility Service Location) in other Utility programs relating to renewable energy payments, credits or rebates may further limit the Portion, Bill Credits or Capacity which you can receive, or which may be attributed to you in connection with this Agreement and the Program. You agree that we are not obligated to request, and that the Utility is not obligated to make any payment or provide Bill Credits to the extent your Capacity exceeds the Program Limitation. We reserve the right to decrease your Capacity in order to maintain your compliance with the Program Limitation. You acknowledge that the Program Limitation set forth in this Section is derived from the Program, and that this Agreement will be deemed automatically amended to incorporate any changes to corresponding provisions in the Program.
- b. **Program Requirements.** To participate in the Program, you must in addition to other applicable requirements (i) be and remain a customer of the Utility for electric service throughout the Term of this Agreement, (ii) assist in designating your Customer Account to which the Utility can post Bill Credits (which shall be at the Utility Service Location shown in Appendix A unless changed pursuant to the Agreement), and (iii) be and remain in compliance with all requirements of this Agreement and the Program throughout the Term of this Agreement.

Appendix D
Cancellation Right
(Copy 1)

Right to Cancel. As set forth in Section 14 of the Community Solar Subscription Agreement (the "Agreement"), you may cancel the Agreement, without penalty or obligation, by sending us a written cancellation notice within three (3) business days of the date you signed the Agreement. To cancel the Agreement, deliver a signed and dated copy of the below Notice of Cancellation (or any other written cancellation notice identifying you and the Agreement) to us at: SunCentral 1750 15th Street, Suite 400, Denver, CO 80202 postmarked no later than midnight of the date that is three business days from the date you signed the Agreement. If you do not provide us a written cancellation notice within that three-day period, you will no longer have a right to cancel the Agreement and you will remain liable for performance of all your obligations under the Agreement.

Note: The following form is made available for the purpose of cancelling the Agreement pursuant to Section 14 of the Agreement within the three-day cancellation period described above. If you are not choosing to cancel the Agreement within the three-day period described above, you should not sign this form.

Two copies of this form are included so that if you do choose to cancel the Agreement by delivering this form to us within that time, you will still have a copy of this form.

Notice of Cancellation

Date of Transaction:

You may cancel this transaction, without any penalty or obligation, within three business days from the above date. If you cancel, any property traded in, any payments made by you under the Agreement and any negotiable instrument executed by you will be returned within 10 days following receipt by us (SunCentral) of your Notice of Cancellation. If you cancel, you must make available to us at our address, in substantially as good condition as when received, any items of value delivered to you under the Agreement.

I, _____ hereby sign this Notice of Cancellation on _____, 20____, and have caused it to be delivered to SunCentral on or before midnight of the date that is three business days from the date I signed the Agreement.

Customer's Signature: _____