

RESOLUTION NO. 113-23

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH XCEL ENERGY FOR ELECTRIC VEHICLE COMMUNITY CHARGING HUB AND PUBLIC CHARGING SERVICES TO REDUCE COSTS ASSOCIATED WITH ELECTRIC VEHICLE SUPPLY INFRASTRUCTURE (EVSI) INSTALLATION

RECITALS:

Xcel Energy's Electric Vehicle Supply Infrastructure (EVSI) program is a reduced cost advisory and turnkey service for fleet, workplace, community charging hubs, and multifamily buildings. The EVSI program includes the design and construction of the necessary infrastructure to install charging stations known as Electric Vehicle Supply Equipment (EVSE).

The attached agreement (Agreement) ensures that Xcel will procure, install, and maintain EVSI for 10 years, after which the City will assume ownership of the infrastructure. The Agreement is required for the City to participate in the EVSI program and to receive funding.

The following four sites have received partial grant funding from Charge Ahead Colorado and will have necessary infrastructure upgrades installed by Xcel at a reduced cost to the City as provided in the EVSI Agreement.

1. Two dual-port Level 2 Chargers at Lincoln Park
2. Two dual-port Level 2 Chargers at Columbine Park
3. Two dual-port Level 2 Chargers in the parking lot behind the Rockslide
4. Two dual-port Level 2 Chargers in the Lunch Loops parking lot

The following two sites, both of which have received partial grant funding from Charge Ahead Colorado or Fleet Zero, will have infrastructure installed by Xcel at no cost to the City as provided in the EVSI Agreement.

1. One dual-port DCFC in the Avalon parking lot (Charge Ahead program)
2. One dual-port DCFC and two dual-port Level 2 Chargers in the City Shops lot (for fleet use only) (Fleet Zero Program)


NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

The Recitals are incorporated herein and in consideration thereof together with the terms of the Agreement, the City Council hereby authorizes the City Manager to execute the Electric Vehicle Community Charging Hub and Public Charging Service Agreement.

By and with this Resolution the City Council finds and determines that the Agreement and the relative benefits and obligations thereof are in the best interest of the City.

As necessary or required the City Council authorizes the expenditure of funds and the commitment of resources to implement and satisfy the Agreement so that the benefits thereof inure to the public benefit.


PASSED and ADOPTED this 20th day of December 2023.



Anna M. Stout
President of the City Council
City of Grand Junction, Colorado



Attest:



Amy Phillips
City Clerk

Electric Vehicle Fleet, Workplace, and Primary General Pilot CUSTOMER Service Agreement (Government Version)

THIS ELECTRIC VEHICLE FLEET, WORKPLACE, AND PRIMARY GENERAL PILOT CUSTOMER SERVICE AGREEMENT (the "Agreement"), is made on the date last executed ("Effective Date") by and between PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation, doing business as Xcel Energy ("Xcel Energy"), 1800 Larimer Street, Denver, Colorado 80202, and _____ ("Customer") having an address of _____. Customer and Xcel Energy may be referred to herein individually as a "Party" or collectively as the "Parties."

The Parties hereto, each in consideration of the promises of the other in this Agreement, agree as follows:

1. Definitions

- "Applicable Laws" means all applicable federal and state laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, and orders of any governmental entity having jurisdiction over the electric vehicle ("Electric Vehicle" or "EV") the Program, the services set forth in this Agreement, the practices involved in the services set forth in this Agreement, or any work Xcel Energy or Customer performs relating to this Agreement.
- "Infrastructure Buyout Amount" means an amount equal to the EV Supply Infrastructure Costs reduced by ten percent (10%) for each full calendar year between the In-Service Date and the date of termination of the Agreement. By way of example only, if the Agreement is terminated eighteen (18) months after the In-Service Date, and Customer is required to pay the Infrastructure Buyout Amount in accordance with Section 5 of this Agreement, the Infrastructure Buyout Amount payable by Customer would be equal to ninety percent (90%) of the EV Supply Infrastructure Costs. In the event the Agreement is terminated by Customer under Section 5.1 or terminated by Xcel Energy for Customer's breach under Section 5.2.3 prior to the In-Service Date, the Infrastructure Buyout Amount shall equal the EV Supply Infrastructure Costs.
- "Calendar Days" means every day shown on the calendar, beginning and ending at midnight.
- "Optional Charging Equipment Buyout Amount" means an amount equal to the estimated total costs incurred by Xcel Energy to procure and install each unit of Optional Charging Equipment, reduced monthly on a straight-line, prorated basis over 10 years from the date such Optional Charging Equipment was placed into service by Xcel Energy.
- "Charging Equipment" means the electric vehicle charging equipment installed at the Customer Location which is used to deliver electricity from the EV Supply Infrastructure to an electric vehicle. Charging Equipment includes the ungrounded, grounded, and equipment grounding conductors, the electric vehicle connectors, attachment plugs, and all other fittings, devices (including the charger), power outlets, or apparatuses associated with the installed device, but does not include EV Supply Infrastructure.
- "Customer-Supplied Charging Equipment" means all Charging Equipment that is not Optional Charging Equipment.

- “Customer Location” means _____(Sample template: Separate agreement for each location to be signed)_____
- “Dispute” means a disagreement between Xcel Energy and Customer that arises under, or that relates to, the Agreement.
- “EV Driver” means an individual who uses the Charging Equipment at the Customer Location to charge an Electric Vehicle.
- “EV Supply Infrastructure” means service panels, conduit, and wiring from the service connection to the charger stub. EV Supply Infrastructure does not include the line extension necessary to connect Xcel Energy’s distribution system to the service connection and does not include the Charging Equipment.
- “EV Supply Infrastructure Costs” means the total costs and expenditures incurred by Xcel Energy to procure, design, construct, and install the EV Supply Infrastructure at the Customer Location, including but not limited to costs of labor, labor loading, materials, transportation, overhead, indirect allocated costs, any allowance for funds used during construction (“AFUDC”), and any other capital related expenditures.
- “Facilities” means any privately, publicly, or cooperatively owned line, system, and/or other utility item that produces, transmits, or distributes communications, power, cable, television, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, signal systems, and other products or services that serve the public, and/or a privately-owned irrigation system. Any necessary appurtenances to each Facility are considered a part of the Facility.
- “Force Majeure Event” means fire, flood, explosion, catastrophe, accident, declared war, riot, act of God, act of terrorism, insurrection, strike, and Applicable Laws that prevent performance, to the extent (i) such event is beyond a Party’s control, that due diligence and use of reasonable efforts by the Party claiming the Force Majeure Event could not have avoided or prevented, (ii) that materially and adversely affects a Party’s ability to meet its obligations under this Agreement, and (iii) the Party claiming the Force Majeure Event gives prompt written notice of the same to the other Party. A Force Majeure Event does not include events due to the acts or omissions of the Party claiming the Force Majeure Event.
- “In-Service Date” means the date the EV Supply Infrastructure has been completed for the specific Customer Location and is ready for Customer to use, if Customer chooses to procure its own Charging Equipment. If Customer chooses to use Optional Charging Equipment, the In-Service Date means the date that EV Supply Infrastructure has been completed for the specific Customer Location and is ready for Customer to use, and the Optional Charging Equipment at the Customer Location has been installed, connected, tested, and is ready to use by Customer. Following the installation and testing of the EV Supply Infrastructure, and Optional Charging Equipment, as applicable, at the Customer Location, the Parties will mutually agree upon and document the In-Service Date applicable to the Customer Location. Even if additional Optional Charging Equipment is subsequently installed, the In-Service Date under this Agreement will remain unchanged.

- “Program” means the Xcel Energy Fleet and Workplace Electric Vehicle Supply Infrastructure Program under which Xcel Energy will procure, install and maintain EV Supply Infrastructure and Optional Charging Equipment, if applicable, to support EV charging by EV Drivers at the Customer Location.
- “Optional Charging Equipment” means Charging Equipment which is supplied and installed by Xcel Energy at Customer’s option pursuant to Section 3.2.
- “Working Days” means any Calendar Day, excluding Saturdays, Sundays, and legal public holidays, as set forth in 5 U.S.C. § 6103(a).

2. Eligibility and Availability

2.1 To be eligible to participate in the Program and prior to Xcel Energy undertaking any Xcel Energy responsibility set forth in Section 4, Customer must provide documentation acceptable to Xcel Energy evidencing that Customer meets all the following requirements (the “Customer Requirements”):

- 2.1.1 Qualify as a non-residential electric customer of Xcel Energy in Colorado;
- 2.1.2 Own or lease the Customer Location, or be Xcel Energy’s customer of record associated with the premise’s electric service meter at the Customer Location;
- 2.1.3 Provide express written consent, in a form acceptable to Xcel Energy in its sole discretion, from the owner of the Customer Location to grant Xcel Energy the appropriate real property rights and continuous access to EV Supply Infrastructure and Optional Charging Equipment, as applicable, installed, owned, and maintained by Xcel Energy, including an easement signed by the owner of the Customer Location, in the form attached hereto as Exhibit A;
- 2.1.4 Commit to installing a minimum of four (4) charging ports per Customer Location or, in cases with fewer than four ports, a minimum of 50 kW of charging capacity;
- 2.1.5 During the Term, agree to take electric service to the Charging Equipment on one of Xcel Energy’s published Commercial rates for which Customer is eligible;
- 2.1.6 If Customer chooses to use the Optional Charging Equipment, commit to paying the monthly bundled customer charge as provided in Xcel Energy’s electric tariff;
- 2.1.7 All Charging Equipment electric load will be separately metered from any other load served at the Customer Location;
- 2.1.8 If Customer does not choose to use Optional Charging Equipment, provide proof, acceptable to Xcel Energy in its sole determination, that Customer has purchased, or will purchase as required by this Agreement and has the ability, financial, technical, or otherwise, to install Charging Equipment from Xcel Energy’s pre-qualified Charging Equipment list. The Charging Equipment on this list meets Xcel Energy’s technical and safety standards, demonstrates interoperability, cyber

security, and smart charging capabilities that enable Customer to participate in managed charging rates or programs;

- 2.1.9 Provide proof, acceptable to Xcel Energy in its sole determination, that Customer can provide demonstrated support of its ability to utilize the EV Supply Infrastructure within six (6) months of its In-Service Date; and
 - 2.1.10 Acknowledgement that Customer may be required to take electric service to the Charging Equipment through a specified rate schedule (e.g., a time-varying rate) if Xcel Energy-owned EV Supply Infrastructure becomes subject to such a requirement as a result of a Colorado Public Utilities Commission (“Commission”) or other legal proceeding, Commission rule, Colorado legislation, or other Applicable Laws.
- 2.2 To be eligible to receive EV Supply Infrastructure, Customer must also provide documentation acceptable to Xcel Energy evidencing that the Customer Location meets the following requirements (the “Customer Location Requirements”):
- 2.2.1 Be located in Xcel Energy’s electric service territory;
 - 2.2.2 Meet Xcel Energy’s minimum safety, accessibility, convenience, and reliability requirements;
 - 2.2.3 Be able to provide a location acceptable to Xcel Energy, in Xcel Energy’s sole determination, to deploy Charging Equipment in a cost-effective manner, based on factors such as proximity to transformers, length of trenching, available transmission and distribution capacity, and ease of access for EV Drivers, as determined by Xcel Energy in its sole discretion; and

3. Customer Responsibilities

- 3.1 Except for the costs incurred by Xcel Energy to undertake the responsibilities set forth in Section 4 of this Agreement, Customer will pay all other costs associated with this Agreement.
- 3.2 Customer may opt to either purchase, supply, and install Charging Equipment itself or have Xcel Energy supply and install Optional Charging Equipment in connection with the Program. If Customer opts to have Xcel Energy supply and install Optional Charging Equipment, Customer must notify Xcel Energy of its decision within thirty (30) Calendar Days of the Effective Date and select Xcel Energy-approved Optional Charging Equipment subject to ongoing monthly rates applicable for such equipment under Schedule EVC “Fleet & Workplace Charging Service.” For Customers opting to have Xcel Energy provide Optional Charging Equipment, Customer's monthly bill will include a charge for the installed cost of all Optional Charging Equipment supplied and installed by Xcel Energy.
- 3.3 If Customer has selected Optional Charging Equipment, Customer may subsequently decide to replace the Optional Charging Equipment with Charging Equipment purchased,

supplied, and installed by Customer upon thirty (30) days' notice to Xcel Energy, during which time Xcel Energy and Customer can coordinate a mutually agreeable time for Xcel Energy to remove the Optional Charging Equipment at no cost to Customer. Once Xcel Energy has removed the Optional Charging Equipment from the Customer Location, on a going-forward basis, the terms in this Agreement concerning Customer-Supplied Charging Equipment will apply, and the terms in this Agreement concerning Optional Charging Equipment shall no longer apply.

- 3.4 Customer may take ownership of each unit of Optional Charging Equipment without any payment to Xcel Energy once the unit of Optional Charging Equipment has been in service for at least ten years and Customer has satisfied all outstanding payment obligations. Customer may also purchase each unit of Optional Charging Equipment upon payment of Optional Charging Equipment Buyout Amount provided Customer has satisfied all outstanding payment obligations for such service. Customer's exercise of either of these options will render Customer's and Xcel Energy's obligations with respect to Optional Charging Equipment inapplicable thereafter for the remainder of the Term. To the extent the Company transfers ownership of Optional Charging Equipment to Customer with or without payment from Customer, Customer will receive such Optional Charging Equipment from the Company on an "As-Is" basis, with no warranty of any kind, express or implied. If Customer takes ownership of the Optional Charging Equipment, Customer will be responsible for all ongoing data services and maintenance of such equipment.
- 3.5 Customer will comply with Xcel Energy's safety and technical specifications.
- 3.6 Customer will assist in coordinating installation and maintenance of the EV Supply Infrastructure and Optional Charging Equipment, as applicable, at the Customer Location with Xcel Energy and its contractor(s), including any applicable Charging Equipment manufacturers, vendors, or subcontractors, who provide services in connection with installing and maintaining the EV Supply Infrastructure and Optional Charging Equipment. This will include issuing or obtaining any necessary license and right to allow Xcel Energy and its contractor(s) access to the Customer Location for the installation and maintenance of the EV Supply Infrastructure and Optional Charging Equipment. Customer will also meet regularly with Xcel Energy to review and coordinate time schedules and track EV Supply Infrastructure and Charging Equipment installation status.
- 3.7 Unless Customer opts to have Xcel Energy supply and install the Optional Charging Equipment, Customer will identify and be responsible for the procurement of all necessary Charging Equipment (i.e. Customer-Supplied Charging Equipment) for the Program at the Customer Location that meet the Customer Requirements within ninety (90) Calendar Days of the Effective Date, and shall provide proof of such purchase to Xcel Energy. Failure to identify the Charging Equipment for the Customer Location and provide proof of purchase of such Charging Equipment within ninety (90) Calendar Days after the Effective Date will void any of Xcel Energy's obligations under Section 4 of this Agreement, and Xcel Energy may terminate, in its sole discretion, this Agreement immediately upon written notice to Customer in the event of such failure.

- 3.8 Customer will provide Xcel Energy with accurate and complete information in order to permit Xcel Energy to successfully install and complete the EV Supply Infrastructure and Optional Charging Equipment, as applicable, for the Program. Customer consents to and permits Xcel Energy through its contractor(s), including any applicable Charging Equipment manufacturers, vendors, and subcontractors, who provided services in connection with installing and maintaining the EV Supply Infrastructure and Charging Equipment, as applicable, to have remote access in order to access, collect, and share data from the Charging Equipment with respect to charging activity, vehicle usage, and technical performance (the "Data") during the Term of this Agreement for purposes of reporting, managing and administering the Program. Xcel Energy shall only receive Data from such contractors on an anonymized and aggregated basis. Xcel Energy may disclose or use any Data, information, or documents it receives from Customer in any manner consistent with Commission data privacy requirements, including in connection with any legal or regulatory proceeding. If Xcel Energy is unable to collect Data through its remote access to the Charging Equipment, and if requested by Xcel Energy, Customer shall collect and provide on a quarterly basis that following Data:
- a. Start and stop times of charges;
 - b. Peak kW per charging session;
 - c. Number of charging sessions daily;
 - d. Amount of time each EV is actually charging per session;
 - e. Whether Customer is providing charging for free or if there is a usage fee to the EV driver;
 - f. Operating costs including non-energy related; and
 - g. Any technologies being used to manage demand.
- 3.9 Customer will pay for power consumed by the EV Supply Infrastructure and dispensed from the Charging Equipment under Customer's applicable Xcel Energy service rate schedule. If at any point during the Term, Xcel Energy-owned EV supply infrastructure becomes subject to a specified service rate schedule (e.g., a time-varying rate schedule) as a result of a Commission proceeding, Commission rule, or Colorado legislation, Customer shall switch to the specified service rate schedule for the remainder of the Term, and Customer shall pay for power consumed by the EV Supply Infrastructure and/or dispensed from the Charging Equipment under such rate schedule upon the effective date of this requirement. If Customer selects Optional Charging Equipment, Customer will also pay the ongoing monthly rate applicable for such equipment under Schedule EVC. "Fleet & Workplace Charging Service."
- 3.10 Customer will provide Xcel Energy the rates charged to EV Drivers by time of day and will provide Xcel Energy with updates to such rates upon Xcel Energy's request. Such rate information may be provided to the Colorado Public Utility Commission on a confidential basis, or in an aggregated and anonymized form.

- 3.11 If Customer opts to provide the Charging Equipment, within six (6) months of the In-Service Date of the EV Supply Infrastructure, Customer must install the Charging Equipment at the Customer Location sufficient to fully utilize the EV Supply Infrastructure.
- 3.12 If Customer opts to provide the Charging Equipment, after installation of both the Charging Equipment and EV Supply Infrastructure is completed, Customer will operate and maintain the Charging Equipment installed by Customer at the Customer Location for the Term of this Agreement and guarantees the safe and reliable operation of the Charging Equipment installed by Customer in accordance with Applicable Laws. During the Term, Customer grants Xcel Energy and its officers, agents, representatives, employees, and contractors a right of ingress, egress, and physical disturbance to the Customer Location on a seven (7) day, twenty-four (24) hour per day basis as required to construct, install, maintain, operate, repair, and remove EV Supply Infrastructure and Optional Charging Equipment, as applicable, in accordance with the provisions of this Agreement. The general manner of such ingress and egress is subject to coordination with Customer.
- 3.13 After installation of both the Charging Equipment and EV Supply Infrastructure is completed, Customer will make the Charging Equipment at Customer Location available for charging twenty-four (24) hours each day, seven (7) days each week, except at times when the Charging Equipment or EV Supply Infrastructure fails to operate or otherwise requires repair. If Customer opts to provide the Charging Equipment and does not select the Optional Charging Equipment, Customer guarantees the Charging Equipment at Customer Location will be in full working order and available for EV charging at least 95 percent of the time annually.
- 3.14 Customer will promptly notify Xcel Energy in the event Customer becomes aware that the Charging Equipment or EV Supply Infrastructure fails to operate or otherwise requires repair.
- 3.15 In the case of total equipment failure of all or a portion of the EV Supply Infrastructure or Optional Charging Equipment, as applicable, that is not caused by Xcel Energy or its employees, agents, or contractors, and not covered by a manufacturer's warranty, Customer may either request that Xcel Energy replace the necessary equipment at Customer's expense, or terminate this Agreement pursuant to Section 5.1 and pay Xcel Energy the Infrastructure Buyout Amount, as set forth in Section 5.1.
- 3.16 Customer will maintain the area surrounding the EV Supply Infrastructure and Charging Equipment, including but not limited to, pavement maintenance, pruning of vegetation, snow removal, and the repair of security lighting.
- 3.17 Customer may remedy minor issues with the EV Supply Infrastructure and Optional Charging Equipment, as applicable, that do not require qualified technicians to address, such as resetting infrequently tripped circuit breakers.
- 3.18 Customer will fund and has appropriated \$_____ as the customer contribution required for the line extension necessary to connect the EV Supply Infrastructure with Xcel Energy's electric distribution system as provided in Xcel Energy's Distribution Extension Policy as set forth in its Colorado electric tariff. Customer is also responsible,

subject to annual appropriation, for the cost to complete any other upgrades necessary for the use of the EV Supply Infrastructure.

- 3.19 It is Customer's responsibility to maintain the Charging Equipment that is not Optional Charging Equipment.

4. Xcel Energy Responsibilities

- 4.1 Xcel Energy and/or qualified and competent contractors hired by Xcel Energy will prepare construction drawings ("Construction Drawings") for the EV Supply Infrastructure and Optional Charging Equipment, as applicable, at location(s) within the Customer Location determined by Customer in coordination with Xcel Energy. The Construction Drawings will show the proposed EV Supply Infrastructure and Optional Charging Equipment, as applicable, and its location(s) within the Customer Location. Prior to Xcel Energy commencing construction of the EV Supply Infrastructure, Customer must approve the Construction Drawings. Once approved, the Construction Drawings may be modified only with the mutual consent of both Parties.
- 4.2 Xcel Energy will prepare and coordinate the EV Supply Infrastructure and Optional Charging Equipment, as applicable, installation schedule ("Installation Schedule") with designated Customer staff as to minimize disruption to Customer's operations. Xcel Energy will also meet regularly with Customer staff to review and coordinate time schedules and track EV Supply Infrastructure and Charging Equipment installation status. Prior to Xcel Energy commencing construction of the EV Supply Infrastructure and Optional Charging Equipment, as applicable, Customer must approve the Installation Schedule. Once approved, the Installation Schedule may be modified only with the mutual consent of both Parties.
- 4.3 Xcel Energy will install the EV Supply Infrastructure and Optional Charging Equipment, as applicable, pursuant to the Installation Schedule and consistent with the Construction Drawings in a good and workmanlike manner, with qualified and competent contractors, in compliance with all applicable codes and engineering standards, and in compliance with all Applicable Laws.
- 4.4 Except as otherwise provided in this Agreement, Xcel Energy will retain title and ownership of the EV Supply Infrastructure and Optional Charging Equipment, as applicable, once installation and commissioning are completed. Customer shall acquire no right, title, or interest in any portion of the work performed by Xcel Energy or Xcel Energy's equipment, EV Supply Infrastructure, Optional Charging Equipment, or Facilities unless transferred to Customer under the provisions in Section 3 or 5, as applicable. The work constructed and installed by Xcel Energy shall be and remain the personal property of Xcel Energy, shall not be considered a fixture of the property, shall not attach to the realty, and shall not be alienable or lienable by Customer or any third party for the Term of this Agreement, and Customer shall not allow lien claims, third-party interest, or any encumbrances to be placed on the work, EV Supply Infrastructure, and/or Optional Charging Equipment. Xcel Energy shall not permit any mechanics' or other liens to be placed on Customer property during the Term of this Agreement caused by or resulting from any work performed, materials, or supplies furnished by or at the request of Xcel Energy or its contractors.

- 4.5 Xcel Energy shall own, operate, and maintain, at its own expense, the EV Supply Infrastructure and Optional Charging Equipment, as applicable, at the Customer Location for the Term of this Agreement, unless terminated earlier as provided herein. Xcel Energy may engage one or more third-party contractors to complete its obligations under this Agreement. Xcel Energy shall not knowingly award contracts to contractors who have been or are suspended or debarred by the State of Colorado or the United States. Xcel Energy shall be responsible for supervising any third-party contractor it chooses to retain.
- 4.6 After installation of, and while Xcel Energy owns, the EV Supply Infrastructure and Optional Charging Equipment, as applicable, Xcel Energy shall conduct emergency repairs on the EV Supply Infrastructure and Optional Charging Equipment on an as needed basis in accordance with the following:
- 4.6.1 Requests for emergency repairs can be made by Customer or Xcel Energy staff.
 - 4.6.2 Customer's requests for repair shall be made via telephone, email, or text message to an agreed-upon representative at Xcel Energy.
 - 4.6.3 All emergency repairs shall be completed by qualified technicians selected by Xcel Energy.
 - 4.6.4 Emergency repair service calls shall begin with inspection of malfunctioning EV Supply Infrastructure or Optional Charging Equipment, as applicable, a diagnosis of the potential issue, and an expected time required for repair.
 - 4.6.5 Xcel Energy shall use commercially reasonable efforts to repair the EV Supply Infrastructure or Optional Charging Equipment, as applicable, in a timely manner.
- 4.7 After installation of, and while Xcel Energy owns the EV Supply Infrastructure and Optional Charging Equipment, as applicable, Xcel Energy may inspect the EV Supply Infrastructure and Optional Charging Equipment at the Customer Location for general wear or malfunction on a periodic basis as determined by Xcel Energy. Such inspection may include but is not limited to the following:
- 4.7.1 Xcel Energy shall have the right, but not the obligation, to inspect the Charging Equipment for initial and ongoing integration with the EV Supply Infrastructure.
 - 4.7.2 If periodic inspections reveal failure of EV Supply Infrastructure or Optional Charging Equipment, as applicable, Xcel Energy shall request on-site technical services for inspection, diagnosis, and emergency repair as set forth in Section 4.6.
- 4.8 Xcel Energy shall be responsible for the cost of purchasing and installing the EV Supply Infrastructure and Optional Charging Equipment, as applicable. Xcel Energy shall also be responsible for all costs that Xcel Energy, in its sole discretion, deems reasonably required for operating and maintaining the EV Supply Infrastructure and Optional Charging

Equipment, as applicable, (except Customer shall pay for all power consumed by the EV Supply Infrastructure and/or dispensed from the Charging Equipment, any applicable charges for Optional Charging Equipment as provided herein, and any costs set forth in this Agreement). All payments for this EV Supply Infrastructure and Optional Charging Equipment, as applicable, will be made directly by Xcel Energy to the third-party contractor retained to complete the work, and Xcel Energy will have no financial obligation for any payments to Customer.

- 4.9 In the case of total equipment failure of all or a portion of the EV Supply Infrastructure and/or Optional Charging Equipment, as applicable, that is caused by Xcel Energy, or its employees, agents, or contractors, and not covered by a manufacturer's warranty, Xcel Energy may either replace the necessary equipment at Xcel Energy's expense or terminate this Agreement pursuant to Section 5.1.

5. Term and Termination

- 5.1 This Agreement shall be effective upon the Effective Date. The term of this Agreement (the "Term") shall be from the Effective Date until ten (10) years following the In-Service Date, subject to annual appropriation. Subject to Section 5.3, either Party may terminate this Agreement for any reason or no reason, without cause, at any time by providing the other Party sixty (60) Calendar Days prior written notice. If Xcel Energy terminates this Agreement pursuant to this Section 5.1 for a reason other than Customer's material breach of Customer's obligations under this Agreement, Xcel Energy shall transfer title of the EV Supply Infrastructure to Customer, without any payment from Customer, including the Buy Out Amount, and the EV Supply Infrastructure will be deemed abandoned in place in "AS IS" condition, without any warranty (express or implied) by Xcel Energy.

- 5.2 Either Party may terminate this Agreement if the other Party materially breaches any of its obligations under the Agreement, in accordance with the following:

5.2.1. Prior to termination pursuant to this Section 5.2, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within thirty (30) Calendar Days of the notice (or if the breach is not one that can be reasonably cured within thirty (30) Calendar Days and if the breaching Party is not working diligently to cure such breach), then the Party giving the notice may terminate the Agreement without reference to Section 5.1 at any time thereafter by giving a written notice of termination.

5.2.2. If Customer terminates pursuant to this Section 5.2 for Xcel Energy's material breach of the Agreement, Xcel Energy shall transfer title of the EV Supply Infrastructure to Customer, without any payment from Customer, including the Infrastructure Buyout Amount set forth in Section 5.3, and the EV Supply Infrastructure will be deemed abandoned in place in "AS IS" condition, without any warranty (express or implied) by Xcel Energy.

5.2.3. If Xcel Energy terminates pursuant to this Section 5.2 for Customer's material breach of the Agreement, Customer shall pay, subject to annual appropriation, the Infrastructure Buyout Amount, and when such fee is paid, Xcel Energy shall

transfer title of all EV Supply Infrastructure to Customer on an "AS IS" basis, without any warranty (express or implied).

- 5.2.4. A Party terminating this Agreement pursuant to this Section 5.2 does not waive its rights to any remedy at law or in equity for a material breach of the Agreement.
- 5.3 Should (a) Customer terminate this Agreement for any reason other than pursuant to the provisions of Section 5.2.2 for Xcel Energy's material breach of its obligations hereunder, or (b) Xcel Energy terminate this Agreement pursuant to the provisions of Section 5.2.3 for Customer's material breach of its obligations hereunder, Customer will be charged and Customer will pay to Xcel Energy the Infrastructure Buyout Amount. The Infrastructure Buyout Amount, if applicable, will be due and payable by Customer thirty (30) days following the termination of the Agreement. Upon payment of the Infrastructure Buyout Amount, Xcel Energy will transfer title of the EV Supply Infrastructure to Customer on an "AS IS" basis, without any warranty (express or implied).
- 5.4 At least one hundred and eighty (180) Calendar Days prior to the end of the Term of this Agreement, the Parties shall endeavor to negotiate a mutually agreeable plan for the EV Supply Infrastructure that will commence at the end of the Term of this Agreement, including but not limited to the following:
- 5.4.1 Extension of the Term of this Agreement for a mutually agreed period of time;
- 5.4.2 Upon expiration of the Term, Xcel Energy transfers the title to the EV Supply Infrastructure to Customer in "AS IS" condition, without any warranties (express or implied) by Xcel Energy; or
- 5.4.3 Upon expiration of the Term, Xcel Energy removes, at Customer's expense, the portion of the EV Supply Infrastructure that is above ground, restoring the Customer Location to original conditions or any other conditions agreed upon by the Parties, and Xcel Energy shall transfer title of the remaining portion of the EV Supply Infrastructure that is not above ground to Customer, without any payment from Customer, and the Remaining EV Supply Infrastructure will be deemed abandoned in place in "AS IS" condition, without any warranty (express or implied) by Xcel Energy.
- 5.5 If, at the end of the Term of the Agreement, the Parties have not come to a mutual agreement pursuant to Section 5.4 above, the Term of the Agreement shall continue until the Parties are able to come to a mutual agreement or until either Party unilaterally terminates the Agreement pursuant to Section 5.1.
- 5.6 Upon termination or expiration of the Agreement, Xcel Energy will remove any Optional Charging Equipment from the Customer Location at no cost to Customer.
- 5.7 Upon termination or expiration of the Agreement, to the extent Customer takes ownership of the EV Supply Infrastructure, Customer assumes the responsibility of maintaining the EV Supply Infrastructure, and in order to continue receiving electric service, Customer must take electric service pursuant to a tariff for which the Customer is then eligible.

6. Warranties, Indemnification, and Limitation of Liability

- 6.1 Customer represents and warrants that: (i) the execution, delivery, and performance of the Agreement has been duly authorized by all requisite action on the part of Customer, and Customer has full power and authority to grant the rights and licenses granted by the Agreement to Xcel Energy, including but not limited to the rights and licenses set forth in this Agreement; (ii) this Agreement constitutes the legal, valid, and binding obligation of Customer; (iii) Customer is and will remain duly licensed, authorized or qualified to do business, and in good standing; and (iv) Customer is and will remain in compliance with all Applicable Laws applicable to Customer in connection with performance under this Agreement.
- 6.2 Xcel Energy, itself or through its contractor(s), shall perform the installation of the EV Supply Infrastructure and the Optional Charging Equipment, as applicable, in a safe and professional manner in accordance with all Applicable Laws. **EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6.2, XCEL ENERGY MAKES OR PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AGAINST INFRINGEMENT, WITH RESPECT TO THE WORK TO BE PERFORMED, SERVICES TO BE PROVIDED, OR EV SUPPLY INFRASTRUCTURE OR OPTIONAL CHARGING EQUIPMENT TO BE DELIVERED UNDER THIS AGREEMENT. IN THE EVENT TITLE TO EV SUPPLY INFRASTRUCTURE OR OPTIONAL CHARGING EQUIPMENT IS TRANSFERRED TO CUSTOMER IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, THE EV SUPPLY INFRASTRUCTURE AND OPTIONAL CHARGING EQUIPMENT IS PROVIDED "AS IS" AND WITH NO WARRANTY OF ANY KIND. XCEL ENERGY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 6.3 **IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL XCEL ENERGY BE LIABLE TO CUSTOMER AND ITS AGENTS, EV DRIVERS, CONTRACTORS AND EMPLOYEES, FOR SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE.**
- 6.4 Subject to the limitations contained in this Agreement, each Party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by Applicable Laws and shall not be responsible for the acts of the other Party and the results thereof. *Notwithstanding the foregoing, as permitted by Applicable laws, Customer shall, at its own expense, defend, indemnify, and hold Xcel Energy harmless from and against any claims, lawsuits, liability, losses, damages, or expenses (including attorneys fees) arising out of, resulting from, or in any way connected with the: (i) the Charging Equipment; (ii) breach of any warranty set forth in Section 6.1; (iii) Customer's, or its employees', agents', contractors', or EV Driver's negligent acts or omissions or willful misconduct; or (iv) the breach of Section 3.6. Xcel and the Customer have, as an accommodated arrangement, included the phrase "as permitted by Applicable laws" as a possible qualification, limitation or bar to any obligation(s) that Customer has or may be claimed to have arising out of or under Paragraph 6.4. The Customer contends that Colorado law, as of the date of the Agreement, specifically Articles X and XI of the Colorado Constitution and the decisions construing those provisions, preclude the Customer from indemnifying Xcel*

Energy. Due to the existence of the legal issue/the fact that the indemnity may fail due to the Constitutional/legal constraints, Xcel Energy acknowledges each, any, and all possible limitations, restrictions or bars that Customer has or may have to any indemnity obligation(s). The acknowledgement of, together with any limitations arising out or under it, shall be construed in favor of the Customer and serve to preclude Xcel Energy or any person or entity claiming by, through or under it from asserting any bad faith claim(s) and/or challenge(s) that this paragraph may be void ab initio and/or that if/when the Customer asserts in good faith that it is or may be barred from indemnification that Xcel Energy will not claim a breach of contract or other cause of action against the Customer arising out of or under this paragraph.

- 6.5 In no event will Xcel Energy be liable to Customer for any claims, expenses, losses, damages, or lawsuits arising out of any interruptions or disturbances in electric service.
- 6.6 Notwithstanding any other term or condition of this Agreement, in relation to this Agreement, the Customer is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

7. General Terms

- 7.1 *No Third-Party Beneficiary.* This Agreement is between the Parties and creates no third-party beneficiaries. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise, to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.
- 7.2 *Assignment Prohibited.* Customer shall not assign the Agreement, or any part thereof, nor delegate in whole or in part, its responsibilities hereunder, without the prior written consent of Xcel Energy. Unless otherwise agreed to in writing by Xcel Energy, no assignment will release or discharge Customer from any obligations under the Agreement. Any prohibited assignment or delegation shall be null and void.
- 7.3 *Legal Compliance.* The Parties shall comply with all Applicable Laws. Each Party shall monitor its agents, contractors, and employees for the purposes of ensuring compliance with all Applicable Laws. If any change in circumstances or law will affect a Party's performance under this Agreement, that Party shall notify the other Party of the change in circumstances or law at the earliest reasonable opportunity, and the Parties will negotiate in good faith to modify the Agreement to take into account the changed circumstance or law.
- 7.4 *Dispute Resolution.* In the event of any Dispute arising out of or relating to this Agreement, the complaining Party shall provide written notice of the Dispute to the other Party. The Dispute notice shall describe the facts surrounding the Dispute in sufficient detail to apprise the other Party of the nature of the Dispute.

Xcel Energy and Customer shall attempt in good faith to settle all Disputes through the negotiation process set forth in this Section. To this effect, unless otherwise agreed, Xcel Energy and Customer shall conduct at least one face-to-face meeting between the designated representatives from both Parties in an attempt to reach a solution that is satisfactory to both Xcel Energy and Customer. Such a meeting shall take place within

seven (7) Calendar Days following delivery of a Dispute notice. If that meeting does not resolve the Dispute, Xcel Energy and Customer shall have executive level leadership from both Parties meet and attempt to resolve the Dispute.

If Xcel Energy and Customer fail to resolve a Dispute in accordance with this Section, either Party may, subject to Section 7.5, proceed to a court of competent jurisdiction and may, subject to any limitation set forth herein, pursue any remedies available to it at law or in equity.

- 7.5 *Applicable Law and Venue.* This Agreement shall be interpreted in accordance with the laws of the State of Colorado. Venue for all legal proceedings arising out of or relating to this Agreement or breach thereof shall be in the state or federal court with competent jurisdiction in Mesa County, Colorado.
- 7.6 *Non-Waiver.* The failure of either Party at any time to insist upon the strict performance of any or all of the terms, conditions, and covenants in this Agreement shall not be deemed a waiver by that Party of any subsequent breach or default in the said terms, conditions, or covenants by the other Party.
- 7.7 *Complete Agreement.* This Agreement constitutes the complete and exclusive understanding of the Parties concerning its subject matter. This Agreement supersedes all prior agreements, representations, understandings, and communications, written or oral, between the Parties as to the subject matter of this Agreement.
- 7.8 *Amendments.* The terms of this Agreement may be changed, amended or modified only by mutual signed agreement of the Parties.
- 7.9 *Consent to Disclose.* Customer consents to Xcel Energy's disclosure of the existence, terms, and status of this Agreement consistent with Commission data privacy requirements. Customer further acknowledges that pursuant to Section 3.7 of this Agreement, Xcel Energy may disclose any information and documents Customer provides to Xcel Energy pursuant to this Agreement. Customer also consents to Xcel Energy's disclosure of any information concerning the EV Supply Infrastructure and related services provided to Customer that Xcel Energy has in its possession, including "customer data" as defined by Commission rules, to address Xcel Energy's reporting requirements in Commission proceedings, including without limitation those established in Proceeding No. 20A-0204E. To the extent the Commission requires any additional written consent from Customer for disclosure of such information, Customer agrees to cooperate with any such request by Xcel Energy. Without limiting the foregoing, by signing this Agreement and participating in the Program, the customer consents and authorizes Xcel Energy to provide the Customer's information related to the Agreement of the Program to third parties, including but not limited to the Colorado Energy Office and the Regional Air Quality Council, for the purpose of administering the Program, coordinating with other third parties offering EV programs and ensuring the Program participants are not receiving funding multiple times for the same equipment and/or costs.
- 7.10 *Property of Xcel Energy.* All reports, drawings, plans, specifications, calculations, studies, software programs, tapes, models, and memoranda, if any, assembled or prepared by Xcel Energy or Xcel Energy's affiliates, independent professional associates, agents,

consultants, contractors, or subcontractors pursuant to this Agreement are instruments of service in respect of the Agreement, and Xcel Energy shall retain all ownership and property interest therein. Customer may make and retain copies for information and reference in connection with the Program, provided, however, that it is understood and agreed that such documents are not intended to be re-used by Customer or others on extensions of the Program or on any other project or for any other purpose other than as expressly set forth in this Agreement, and , subject to the requirements of the Colorado Open Records Act, §§ 24-72-200.1– 205.5, Customer shall not re-use or disclose to any third party all or any portion of such work product without the express prior written consent of Xcel Energy, which consent shall not be unreasonably withheld.

- 7.11 *Force Majeure.* If a Party's performance is delayed or hindered by a Force Majeure Event, such Party is excused from such performance for the period of delay, provided that the Party claiming a Force Majeure Event has notified the other Party of the delay as soon as is reasonably possible. In such event, the period for the performance shall be extended for the period of such delay.
- 7.12 The Parties are independent contractors. Nothing in this Agreement or in the activities contemplated by the Parties hereunder shall be deemed to create an agency, partnership, employment, or joint venture relationship between the Parties or any of their representatives. Neither Party is an agent of the other nor has the authority to represent the other as to any matters. Customer is responsible for the safety of its respective agents, employees, and other representatives. Xcel Energy in no way assumes any of the duties, obligations, or liabilities attributed to Customer under the Agreement.
- 7.13 Those provisions of this Agreement which would require that they survive termination of the Agreement in whole or part in order to give them full force and effect will survive the termination of the Agreement, regardless of the date, cause, or manner of the termination. Xcel Energy's right to retain any Data collected in connection with the Program shall survive termination. In addition, all rights of action arising from or related to the Agreement that accrue during the Term of the Agreement, and any remedies for such claims, both legal and equitable, will survive such termination.
- 7.14 *Branding and Consumer Education.* The Parties agree to discuss opportunities for Xcel Energy branding, Consumer outreach and education efforts related to the benefits of electric vehicles, and implementation of renewable energy in connection with the Program.
- 7.15 *Taxes on Sale of EV Supply Infrastructure and/or Optional Charging Equipment.* If Xcel Energy sells the EV Supply Infrastructure and/or the Optional Charging Equipment to Customer for an amount equal to the Infrastructure Buyout Amount and/or Optional Charging Equipment Buyout Amount for such EV Supply Infrastructure and/or Optional Charging Equipment and Customer purchases the same, then Xcel Energy will deliver to Customer a Bill of Sale with a purchase price equal to the Infrastructure Buyout Amount and/or Optional Charging Equipment Buyout Amount for such EV Supply Infrastructure and/or Optional Charging Equipment. Customer further agrees that, in accordance with federal and state laws in effect at the time of the sale of the EV Supply Infrastructure and/or Optional Charging Equipment from Xcel Energy to Customer: (i) Customer shall

be responsible for and shall pay transfer taxes, either directly to a taxing authority or to Xcel Energy, as required by law, related to the Infrastructure Buyout Amount and/or Optional Charging Equipment Buyout Amount as stated on the Bill of Sale; and (ii) Xcel Energy agrees to complete a Form W-9 "Request for Taxpayer Identification Number and Certification" in the event of such sale. Notwithstanding any other term or condition of this Agreement, Customer is not liable for the payment of interest, taxes, late charges, or penalties of any nature, except for any additional amounts that the Customer may be required to pay under Applicable Laws. Xcel Energy agrees to accept a properly completed and valid exemption certificate(s) for any taxes that may otherwise be due upon the sale. Customer remains liable for taxes on the sale unless and until such properly completed and valid documentation has been provided to Xcel Energy and remains liable for interest, penalties and late charges relating to any taxes when such additional charges are caused by Customer's failure to provide exemption documentation or prompt payment of any taxes actually due.

7.16 *Consent to Xcel Energy's Applicable Terms and Conditions.* Customer agrees that the electric service Customer will take in connection with this Agreement will be under and subject to Xcel Energy's Colorado electric tariff. Customer further acknowledges that the line extension necessary for Xcel Energy to install the EV Supply Infrastructure and Customer's financial obligations in connection with the line extension are subject to Xcel Energy's Distribution Extension Policy as set forth in Xcel Energy's Colorado electric tariff.

7.17 *Notice.* Any notice required or permitted by this Agreement shall be deemed given (i) when delivered by hand, (ii) on the next Working Day after being sent by a reputable overnight courier service for next Working Day delivery, or (iii) on the third Working Day after being sent by prepaid United States mail, return receipt requested, in each case to the Party at the address specified as follows:

Customer: _____

Xcel Energy: _____

evapplications@xcelenergy.com

Either Party may change its address for notice purposes by giving the other Party prior written notice of the new address and the date upon which the change will be effective.

7.18 *Electronic Signature and Electronic Records.* Both Parties consent to the use of electronic signatures. The Agreement and any other documents requiring signature hereunder may

be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

- 7.19 *No Discrimination in Employment.* In connection with the performance of any work on Customer's behalf under this Agreement, Xcel Energy may not refuse to hire, discharge, promote, or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability.

8. Appropriation.

- 8.1 *Subject to Annual Appropriation.* Consistent with Article X, Section 20 of the Colorado Constitution, any financial obligation of the Customer not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the Customer hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge requirement, debt or liability beyond the current fiscal year. Notwithstanding anything to the contrary, it is the intent of the Parties that if the Customer is obligated to pay the Infrastructure Buyout Amount, that such obligation is not a charge requirement, debt or liability beyond the current fiscal year.
- 8.2 *Appropriation Requirement Amount.* Prior to Xcel Energy beginning construction on the EV Supply Infrastructure, Customer shall provide Xcel Energy documentation acceptable to Xcel Energy evidencing the Customer has fully appropriated adequate present cash reserves in an amount equal to the EV Supply Infrastructure Costs up to a maximum of \$_____ ("Appropriation Requirement Amount") through the end of the then-current fiscal year. The officer of Customer at any time charged with the responsibility of formulating budget proposals impacting this Agreement shall include in the annual budget proposal submitted to the applicable budget approval authority, in any year during which this Agreement is in effect, the Appropriation Requirement Amount. In the event that Customer fails to appropriate in full the Appropriation Requirement Amount in its final budget for the next fiscal year before the end of the current fiscal year for which the Appropriation Requirement Amount was fully appropriated during the Term, this Agreement will immediately and automatically terminate on the last day of Customer's fiscal year in which the Appropriation Requirement Amount was fully appropriated, Customer shall notify Xcel Energy within ten business days of such failure to appropriate, and the Infrastructure Buyout Amount will become due and payable immediately upon such termination. However, a failure to notify will not excuse Customer's obligation to pay the Infrastructure Buyout Amount. Upon Xcel Energy's receipt of payment of the Infrastructure Buyout Amount, Xcel Energy shall transfer title of all EV Supply Infrastructure to Customer on an "AS-IS" basis, without any warranty of any kind, express or implied.

IN WITNESS WHEREOF, each of the undersigned is duly authorized and directed to sign this Agreement.

[Insert Customer Name]

By _____ Date: _____

Name _____

Title _____

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

By _____ Date: _____

Name _____

Title _____