

**Fresh Air Energy VIII, LLC  
COMMUNITY SOLAR GARDEN SUBSCRIPTION AGREEMENT**

**SUBSCRIBER: CITY OF GRAND JUNCTION, COLORADO**

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**1. PARTIES**

THIS COMMUNITY SOLAR GARDEN SUBSCRIPTION AGREEMENT („Agreementf), dated April 3, 2014 by and between CITY OF GRAND JUNCTION, a Colorado home rule municipal corporation (the „Subscriberf) in Xcel Energy Service Territory in Mesa County, Colorado and FRESH AIR ENERGY VIII, LLC, a Colorado Limited Liability Company, located at 650 Townsend Street, Suite 310,

San Francisco, CA 94103 (,Subscription Organizationf, ,SOf, or ,Contractorf), each referred to as a ,Partyf to this Agreement and, collectively, as the ,Partiesf.

## 2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Agreement shall be effective and enforceable only as of the date it is executed and signed by such person or persons fully authorized to execute this Agreement on behalf of the Subscriber (hereinafter the ,Effective Datef). The Subscriber shall not be liable to pay or reimburse SO for any performance hereunder including, but not limited to, costs or expenses incurred, or to be bound by any provision hereof prior to the Effective Date.

## 3. RECITALS

### A. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement. Consideration for this Agreement includes, but is not limited to, the benefits accruing to SO from Xcel under the Xcel Offer; the payments to SO from Subscriber; Xcel Billing Credits accruing to Subscriber; and, the other benefits enjoyed by the Parties under this Agreement.

### B. Purpose

- i. SO desires to design, construct, own, operate and maintain a community solar garden on property owned by Mesa County Valley School District No. 51 pursuant to the Site License, to produce electrical power from such garden for sale to Xcel Energy, Inc., (,Xcelf) pursuant to the Xcel Offer, and to perform the obligations of a subscriber organization for such garden pursuant to the Act and to access the community solar garden across property owned by the City of Grand Junction pursuant to a separate lease; and,
- ii. Subscriber requires electric service well into the foreseeable future at its schools and facilities located within Xcel service territory, including those designated in Exhibit B hereto, and desires to obtain a subscription interest in the CSG as provided in the Act and as further described herein as a means to achieve potential reductions in the cost of electrical service at its facilities, subject to the terms and conditions of this Agreement.

### C. References

All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or attachments, are references to sections, subsections, exhibits or attachments contained herein or incorporated as a part hereof, unless otherwise noted or implied by its use in context.

## 4. DEFINITIONS

Terms used in this Agreement shall be as defined in the Agreement or as follows, unless the context otherwise expressly requires a different construction and interpretation.

- A. ,Actf shall refer to the Colorado Community Solar Garden Act, section 40-2-127, C.R.S, as the same shall be amended from time to time.
- B. €Affiliatef shall refer to, as to any Person, any other Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, ,controlf (including with its collective meanings, ,controlled byf and ,under control withf) shall refer to possession,

directly or indirectly, of power to direct or cause direction of management or policies (whether among ownership of securities or membership or other ownership interests, by contract or otherwise).

- C. , **Agreement** shall mean this document, with all its included contents, terms and conditions, including any attached exhibits and other documents incorporated by reference herein, together with any amendments hereto that have been properly executed and approved by the Parties pursuant to **Section 21(J)** below.
- D. , **Annual Total Subscription Fees** shall mean the total of all scheduled monthly Subscription Fees to be paid in any given Fiscal Year, which for purposes of **Section 10.C.** shall mean having Invoice Due Dates within that Fiscal Year, such that when the calculation required by **Section 10.C.** is performed, the periods to be compared to determine any Annual Shortage shall be the same periods.
- E. , **Annual Shortage** shall mean the difference between the Annual Total Subscription Fees and the annual payments made to SO as described in **Section 10.C.iii.** of this Agreement.
- F. , **Appropriation** shall mean for purposes of this Agreement an action of the Legislative Authority of a Political Subdivision by which funds are lawfully made available for use or expenditure by the Political Subdivision.
- G. , **Appropriated Funds** shall mean funds made available by Appropriation.
- H. , **Available Annual True-up Amount** shall mean, for purposes of the **Section 10** true-up calculation, such positive portion of the Xcel Billing Credit Annual Total Net available to pay SO at the end of any Fiscal Year to reduce Annual Shortage, if any.
- I. , **Colorado Public Utilities Commission** or , **COPUC** shall mean, for purposes of this Agreement, that regulatory body designated by Colorado law to establish rules, regulations and policies to implement, regulate and control the CSG and subscriptions therein.
- J. , **Commercial Operation** shall mean the condition existing when (a) SO has met all Conditions Precedent specified in **Section 5** of this Agreement; and (b) the CSG is completed and operating as required by Xcel and is delivering Energy to Xcel's service grid under an approved and executed interconnection agreement between Xcel and SO, after SO has satisfactorily completed any requisite testing and certifications associated with or required by such interconnection agreement.
- K. , **Commercial Operation Date** shall mean the date on which Contractor achieves Commercial Operation.
- L. , **Community solar garden** shall have the meaning defined by statute at C.R.S. , 40-2-127(2)(b)(1)(A) and when capitalized, , **Community Solar Garden** or , **CSG** shall mean the community solar garden financed, designed, constructed, owned, operated, and maintained by SO for the purposes of satisfying SO obligations under this Agreement.
- M. , **Development Period** shall mean that period beginning on the Effective Date and ending August 31, 2014, unless further extended as provided in **Section 5** of this Agreement.
- N. , **Effective Date** is the date that this Agreement is signed both by a person having lawful authority to execute the Agreement on behalf of the Subscriber, and by an officer of SO having lawful authority to execute the Agreement on behalf of SO.

- O.** , **Energy** shall refer to the electrical power and energy generated by the CSG, from an eligible solar renewable energy resource as defined in C.R.S. § 40-2-124(1)(a)(IV) C.R.S., as further described in **Section 8. E.**
- P.** , **Event of Non-Appropriation** shall mean a failure of Subscriber to receive direct or indirect funding by Appropriation to pay for utility service at, or Subscription Fees related to, any subscribed retail customer location, or a failure to receive or make available revenues sufficient to pay for utility services for or with respect to any subscribed retail customer location or the subsequent rescission of such funding.
- Q.** , **Event of Suspension** shall mean an election made by SO, in writing, to suspend the obligations of the Parties following an Event of Non-Appropriation as further described in **Section 14 C.**
- R.** , **Extension Period** shall mean a one (1) year period extending the Initial Term and any other one (1) year extensions thereafter.
- S.** , **Fiscal Year** shall mean, for any given Subscriber, the twelve (12) month period for which Appropriations or revenue allocations are made available to the Subscriber.
- T.** , **Initial Term** is that period of time beginning on the Commercial Operations Date and ending on the twentieth (20<sup>th</sup>) anniversary of such date.
- U.** , **Invoice Receipt Date** shall mean the date of receipt by Subscriber of a correct, accurate, and complete billing as qualified in **Section 11**, except in the case described in **Section 11.E.**, where the term shall have the meaning described in such section.
- V.** , **kWh** shall mean kilowatt hours, and , **kWh-AC** shall mean kilowatt hours of alternating current..
- W.** , **Legislative Authority** shall mean the governing board, council, or legislative authority of a Subscriber, if Subscriber is a Political Subdivision or other governmental entity. As used herein, the term is used to define that governing board, council, or person(s) having lawful authority to commit funds or approve budgets for expenditures.
- X.** , **Lender** shall mean any financial institution with which SO has agreements for the financing of all or part of the CSG or SOEs obligations under this Agreement, including financing for construction of the CSG.
- Y.** , **MW** shall mean megawatts; , **MW-DC** shall mean megawatts of direct current.
- Z.** , **Option Letter** shall mean a document in form substantially similar to **Exhibit D** that may be unilaterally executed by a Subscriber to reallocate the percentage of CSG production subscribed by Subscriber among then subscribed meters or to add or delete meter locations to or from the Subscription. Option Letters may only change the meter locations and meter allocations designated in **Exhibit B**, Subscriber's Designation of Subscribed Meters and Meter Allocations.
- AA.** , **Person** shall refer to any individual, corporation, partnership, limited liability company, joint venture, association, trust, estate, unincorporated organization or other business entity.
- BB.** , **Political Subdivision** shall mean any Colorado governmental entity or subdivision of the State of Colorado other than an agency, department, division or office of the State, or an institution of higher education where the effectiveness of contracts is subject to approval by the Controller of the State of

Colorado, and shall include without limitation any town, city, county, school district or special district in Colorado.

**CC.** , **Qualified Subscriber** shall mean a public institution of education, agency, department, division, office or institution of any City in Mesa County, Mesa County, and any agency of the State of Colorado or a Political Subdivision.

**DD.** , **Renewable energy credit** or , **REC**, for purposes of this Agreement, means the contractual right to **i.** the full set of non-energy attributes, including any and all international, federal, state or local credits, governmental or commercial benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the specific amount of Energy generated from the Community Solar Garden, **but not including Xcel Billing Credits**, and, **ii.** any use of such non-energy attributes for purposes of demonstrating compliance with the renewable energy standard under state of Colorado statute and rule.

**EE.** , **Site License** shall mean that certain Site License Agreement dated as of August 7, 2013 between Ecoplexus, Inc. and Mesa County Valley School District No. 51, a copy of which is attached hereto as **Exhibit F**.

**FF.** , **Subscriber** shall mean a retail customer of a qualifying retail utility who owns or has beneficial use of Energy generated by the CSG with a claim to a subscription and who has identified one or more physical locations to which the subscription shall be attributed. The term as used herein shall have the full meaning defined in C.R.S. § 40-2-127(2)(b)(II) and used in C.R.S. § 40-2-127(2)(b)(I)(A). A subscriber may include a State of Colorado executive state agency, a public institution of higher education or a Political Subdivision. When capitalized, the term , **Subscriber** herein shall mean the subscriber identified in **Section 1**.

**GG.** , **Subscription** shall mean a proportional interest expressed as a specific percentage in the Energy output of any solar electric generation facilities installed at a community solar garden, but not including Renewal Energy Credits. The term as used herein shall have the full meaning defined in §40-2-127(2)(b)(III) C.R.S. When capitalized, the term , **Subscription** herein shall mean the Subscriber's subscription in the CSG.

**HH.** , **Subscription Agency Agreement** shall mean the agreement between SO and the Subscriber required by Xcel for participation in the Xcel Offer. A copy of the form of the Subscription Agency Agreement is included as **Exhibit C**.

**II.** , **Subscription Fees** shall mean the amount to be paid monthly to SO for the Subscriber's Subscription. Subscription Fees shall be assessed at the rates per kWh-AC delivered to Xcel in any given year of Commercial Operation as scheduled in **Exhibit A**.

**JJ.** , **Subscription Services** shall refer to those services and other duties and responsibilities of SO as described herein.

**KK.** , **Xcel Agreement(s)** shall refer to the Xcel Offer agreements, including any required interconnection agreement between SO and Xcel, the Solar Rewards Community Agreement, the Subscription Agency Agreement(s) and any other documents and forms which are required by Xcel in connection with the Xcel Offer or for Subscriber to receive Xcel Billing Credits commensurate with its Subscription as provided by applicable law or regulation and as contemplated by this Agreement. A list of the Xcel Agreements is attached as **Exhibit G**. To the extent such other Xcel agreements are not available or have not been

executed at the time of execution of this Agreement, the Parties agree that the other Xcel Agreements, when executed, shall be included in this definition by reference.

**LL. , Xcel Billing Credits<sup>f</sup>** (also known as ,Solar Rewards Community Service Subscriber Credits<sup>f</sup>) shall mean the monthly credits received from Xcel by Subscriber on Subscriber's retail customer electrical bill, for any Subscription location, for the Energy delivered to Xcel by the CSG and attributed to the Subscriber's Subscription.

**MM. , Xcel Billing Credit Annual Total<sup>f</sup>** shall mean the aggregate of all Xcel Billing Credits received by a Subscriber in its Fiscal Year totaled for purposes of the true-up calculation described in **Section 10**.

**NN. , Xcel Offer<sup>f</sup>** shall refer to the Xcel Solar\*Rewards Community offer and shall refer to the renewable solar energy program set up by Xcel in order to meet state of Colorado statute and COPUC Rule 4 CCR 723-3 requirements, as such may be modified from time to time by future statutes or rules of the COPUC, and to comply with the then current Xcel Renewable Energy Standard Compliance Plan.

**OO. , Xcel Service Territory<sup>f</sup>** shall refer to that service area in which Xcel is permitted by the COPUC to provide electrical power for sale to customers.

## 5. CONDITIONS PRECEDENT

This Agreement and Subscriber's payment obligations under this Agreement shall be subject to full satisfaction of the following Conditions Precedent on or before expiration of the Development Period:

- A. Subscription Organization shall obtain and assume, by assignment with the prior written consent of Mesa County Valley School District No. 51, all of the rights and obligations of Ecoplexus, Inc. under the Site License, and shall provide Subscriber with a copy of the executed instruments evidencing such assignment and consent.
- B. SO shall construct the CSG with a nameplate capacity of no less than 1.97 MW-DC on the site described in the Site License in accordance with the Site Development Plan and Conditional Use Permit issued by the City of Grand Junction and dated June 25, 2013 (such permit and plan are attached hereto as **Exhibit H**). The CSG shall have a designed initial output of no less than 3.5 kWh-AC in the first full year of Commercial Operation, but in no case shall the nameplate production thereof exceed the limits permitted by or described in the Xcel Offer.
- C. Subscription Organization verifying and confirming, in writing, (i) Subscriber's qualification as a subscriber pursuant to State statute and COPUC rule; (ii) Subscriber subscribed meter locations all qualify for this Subscription; and (iii) acceptance by Xcel as such.
- D. Approval by Xcel of the CSG for Commercial Operation within the time required by Xcel or within any extensions granted by Xcel, and provision to Subscriber of evidence of Xcel approval to Subscriber. Receipt of an executed copy of the Subscription Agency Agreement and acceptance in writing by Xcel, either in letter form, email, or via its on-line system for subscriber set-up of meters, shall be sufficient evidence of such approval.
- E. Subscription Organization providing to Subscriber a legal opinion, written by an attorney licensed in the state of Colorado or another state (provided such attorney is qualified in the subject matter as it relates to community solar gardens or similar projects involving shared interests in the output of solar electric generation facilities as such is authorized under state of Colorado statute and COPUC rule) that subscription interests in Energy produced at the CSG are not securities subject to regulation by state or federal authorities.

The Subscriber shall have no payment obligations to SO until all Conditions Precedent have been satisfied, or waived in writing by the person identified to receive notice in **Section 19** after a showing satisfactory to Subscriber in its sole discretion that SO has diligently attempted to satisfy a Condition Precedent but cannot fully do so. Prior to satisfaction of all Conditions Precedent, SO shall provide Subscriber monthly updated schedules showing actual and planned completion of all efforts necessary to achieve satisfaction of the Conditions Precedent. If SO is or will be unable to achieve satisfaction of the Conditions Precedent on or before expiration of the Development Period despite diligent efforts on its part, SO may extend the Development Period up to one hundred eighty (180) days with Subscriber's prior written consent, which consent shall not be unreasonably withheld in the event the SO's failure to achieve satisfaction of the Conditions Precedent on or before expiration of the Development Period is due to causes beyond SO's reasonable control. Subscriber acceptance of any Condition Precedent shall represent only Subscriber's acknowledgment that a condition to this Agreement has, to the best of Subscriber's knowledge and belief, been satisfied.

**6. SUBSCRIBER'S SUBSCRIPTION**

Subject to the terms and conditions of this Agreement, upon satisfaction of the Conditions Precedent set forth in **Section 5** above, Subscriber shall have a subscription to twenty-three percent 23% of the production capacity and output of the CSG; the benefit of Xcel Billing Credits relating to twenty-three percent 23% of the Energy provided to Xcel from the CSG, as identified in **Exhibit A** hereto.

**7. TERM**

This Agreement shall be in full force and effect on the Effective Date and shall continue initially until the Commercial Operations Date. If the Commercial Operations Date does not occur on or before expiration of the Development Period, or such extensions thereof as provided in **Section 5** above, this Agreement will terminate and be of no further force or effect. Upon the Commercial Operations Date, the term of this Agreement shall be extended automatically for the Initial Term, unless earlier terminated as provided in this Agreement. Subscriber may, by written notice by Subscriber to SO given at least thirty (30) days prior to the expiration of the Initial Term or any Extension Period, elect to extend such term or period for up to five (5) successive Extension Periods. Except as otherwise provided in a written amendment signed by Subscriber and SO, the terms and conditions of this Agreement shall apply and govern each Extension Period.

**8. STATEMENT OF WORK**

SO shall have the following obligations under this Agreement:

- A. During the Initial Term and any Extension Period, SO shall provide Energy from the CSG pursuant to Subscriber's Subscription as provided in this Agreement.
- B. SO shall perform the functions of a subscriber organization with respect to the CSG and provide all services required of a subscriber organization by the Act, COPUC rules and regulations, the requirements of the Xcel Offer and as otherwise required by this Agreement.
- C. SO shall make any and all certifications and reports required by Xcel, and shall abide by the terms and conditions set forth in the Xcel Offer; perform any and all obligations, promises, agreements and covenants not expressly reserved to Subscriber by the Xcel Offer or this Agreement, and indemnify Subscriber for SO's failure to do so. Xcel shall be solely and uniquely responsible for complying with the requirements of the Xcel Offer as shall be necessitated by this Agreement, law, and/or COPUC rule. Subscriber shall make reasonable efforts to assist SO in meeting its reporting obligations under the Xcel Offer or applicable COPUC rules and regulations, so long as such assistance does not result in additional expense to Subscriber, subject Subscriber to obligations under any collateral agreement, or require Subscriber to act in a manner contrary to law or in the best interest of Subscriber.

- D. Site License.** SO shall faithfully perform and comply with each and every condition, term and/or requirement that the Licensee is obligated to perform or comply with pursuant to the Site License, the terms of which are incorporated by this reference as if fully set forth herein. SO shall indemnify, save, and hold harmless Subscriber, its directors, officials, officers, employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by said Licensee or its employees, agents, subcontractors, or assignees in exercising rights or performing obligations under the Site License. This subparagraph shall not be construed or interpreted as a waiver, express or implied, by Subscriber of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-201, *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. 2671, *et seq.*, as applicable, as now or hereafter amended.
- E. Energy Provided to Xcel.** During the Initial Term and any Extension Period, SO shall provide Energy generated by the CSG, measured in kWh-AC, to Xcel, for which Xcel is required to credit Subscriber's retail customer electrical billing for a given Subscription location pursuant to the then current COPUC approved Xcel Billing Credits. SO shall provide Xcel required documentation (which may be in the form of electronic information) so that Subscriber is credited with Subscriber's Subscription allocation at each subscribed meter location. SO and Subscriber and entered, or shall enter, into the Xcel approved Subscription Agency Agreement required by Xcel to allow for such Xcel Billing Credits to be provided to Subscriber. The Subscription Agency Agreement is attached hereto and incorporated herein as part of **Exhibit C**, or shall be if not yet executed at the time this Agreement is executed. The Parties agree that the minimum Energy provided to Xcel each year from the CSG will be no less than that scheduled in **Exhibit A**. SO guarantees to Subscriber no annual minimum Xcel Billing Credit dollar amount will be provided to Subscriber by Xcel; however, in the event CSG production is less than the minimum amounts specified in **Exhibit A**, any reductions in Subscriber's retained Xcel Billing Credits that would result from such shortfall in production shall be offset by an equivalent reduction in the Subscription Fee billing. Any required reduction in Subscription Fee payment for this adjustment shall take place during the true-up described in **Section 10** below. The basis and calculations for such adjustment shall be provided to Subscriber with Subscriber's final Fiscal Year monthly billing and shall be subject to audit by Subscriber.
- F. Subscription Services**  
SO shall provide such Subscription Services as may be required by law, COPUC rules or the Xcel Offer related to fulfilling required obligations to all subscribers, including the production, delivery and metering of Energy, and as otherwise required under this Agreement. Subscription Services shall also include, but shall not be limited to, the following: auditing of utility billing and Xcel Billing Credit accounting to the extent permitted or required by Xcel and this Agreement, management of all other requirements of Xcel including customer qualification, fulfilling minimum subscription requirements for income-qualified subscribers, and minimum reporting as required under this Agreement. With notice to and the consent of the Subscriber, SO may subcontract with other Persons to perform its administrative and management obligations for Subscription Services, such as marketing, billing, customer management, utility process and data management, accounting, subscriber acquisition and replacement, provided that SO shall remain liable to Subscriber for all obligations under this Agreement. SO shall perform its Subscription Services with the due care, skill, and diligence provided by persons experienced in the performance of similar services. Without limitation to the foregoing, SO shall:
- i. Make reasonable efforts to promote interest in the benefits of a subscription to potential Political Subdivisions and other agencies and departments of the State with a goal of maintaining an active roster of potential Qualified Subscribers to ensure compliance with Xcel Offer requirements, COPUC rules, and this Agreement.



- ii. Enter into agreements with other Qualified Subscribers or, if a Qualified Subscriber is not available, other subscribers, using a form substantially similar to this Agreement with terms that are identical to those described herein when possible, except that SO may enter agreements with income-qualified subscribers on terms that vary from those of this Agreement (subject to any other express requirements stated elsewhere in this Agreement for agreements with income-qualified subscribers).
- iii. Maintain lists of potential income-qualified subscribers or entities with income-qualified meters or subscribers sufficient to reasonably assure that the CSG complies with all COPUC rules requiring minimum levels of CSG subscription participation by income-qualified subscribers.
- iv. Provide that all subscription agreements entered into with any subscriber, other than an agency, department or public institution of higher education or a Political Subdivision of the state of Colorado, shall include a provision by which said subscriber shall indemnify Mesa County Valley School District No. 51 and the City of Grand Junction and their elected officials, employees, officers, employees, and agents, against any and all claims, damages, liability and court awards, including costs, expenses and attorneys' fees incurred, as a result of any negligent act or omission or breach of the subscription agreement by such subscriber, its employees, agents and assigns arising out of or in any way connected with the Site License, the access lease or such subscriber's subscription.
- v. On request, provide Subscriber with copies of all records provided by SO to Xcel or from Xcel to SO, or alternatively, provide a means for electronic access to such information. In addition, promptly following execution of each Xcel Agreement, SO shall provide to Subscriber with a complete and legible copy of such fully executed Xcel Agreement in paper or electronic form.
- vi. Provide billing and payment training and instruction to Subscriber as well as ongoing assistance to Subscriber regarding explanations of SO and Xcel billing and billing error corrections.
- vii. Provide, upon request of Subscriber, copies of all written operation and maintenance procedures for the CSG detailing emergency procedures and evidence of and outcomes of periodic inspections to verify proper operation of all CSG systems (including contact information for persons assigned to perform such tasks), and ensure such procedures are implemented. To the extent SO subcontracts with qualified subcontractors to perform such procedures, SO shall ensure that any such subcontractor carries policies of insurance fully in compliance with the requirements of **Exhibit E**, and shall, upon Subscriber request, provide a copy of such subcontract and evidence of required insurance.
- viii. Upon request of Subscriber and subject to any applicable law, provide to Subscriber electronic copies of all subscriber subscription agreements and Xcel Agreements entered into by the SO relating to the CSG and, to the extent not readily available through Xcel, make available for review all records and data generated by SO in performing Subscription Services for any and all subscribers, which may be in electronic or online format.
- ix. Provide Subscriber such information as Subscriber may reasonably require, describing at a minimum the name and business activities, if any, of any proposed subscriber that is not a Qualified Subscriber for Subscriber approval, which approval shall not be unreasonably denied or delayed, or made subject to unreasonable conditions.
- x. Exercise diligent efforts at all times to keep the CSG fully subscribed, with at least five percent (5%) of the CSG capacity subscribed to income-qualified subscribers. If at any time the CSG

becomes less than fully subscribed, or income-qualified subscriber participation in the CSG drops below the five percent (5%) minimum requirement, SO shall promptly inform Subscriber, and upon request, advise how and when SO intends to correct the deficiency in subscription level.

- xi. Exercise best efforts to assist Subscriber in optimizing Subscriber's Xcel Billing Credits without having any specific allocated CSG subscription percentage, expressed as kWh-AC over any 12-month period, exceed the location's kWh-AC per year limit set by COPUC rule and the Xcel Offer. Such efforts shall include, but not necessarily be limited to, the following:
  - a. Monitor all subscribed retail customer locations of Subscriber to assess whether subscription allocations need adjustment to assure subscription allocations will approximate actual usage based on historic usage, trending indicated by current billings, and Subscriber provided information as to changes in operations at or use of a given subscribed retail customer location.
  - b. Recommend reallocation among the subscribed allocations on a meter-by-meter basis for each subscribed retail customer location if appropriate.
  - c. Recommend Subscriber retail customer meter location substitutions that may result in increasing Subscriber's Xcel Billing Credits.
  - d. Pending Subscriber acceptance of SO's recommended reallocations and substitutions, draft changes to **Exhibit B** for Subscriber to include in an Option Letter that would authorize any meter and allocations changes approved by Subscriber; and coordinate the changes with Xcel so that the required changes to Xcel Billing Credits occur.

Monitoring efforts shall be performed monthly, with SO recommendations submitted to Subscriber with Subscription Fee billings as often as necessary to allow Subscriber time to review, comment, verify and confirm, accept such recommendations, and effect an Option Letter. At a minimum, recommendations shall be provided in the tenth (10<sup>th</sup>) month of the Subscriber's Fiscal Year; again when Xcel Billing Credits changes are known; any time Subscriber provides the information identified in **Section 8.F.xi.a.**; and at any time SO is given notice of an Event of Non-Appropriation.

#### **G. Maintenance and Operation of CSG**

SO or its employees or subcontractors shall perform, or cause to be performed, all operations, repair, maintenance, and monitoring services required or appropriate for the CSG during the Initial Term of this Agreement and any Extension Periods thereto, as well as any and all SO responsibilities required to assure Subscriber of receiving all monthly Xcel Billing Credits associated with the Energy delivered to Xcel due to Subscriber's Subscription interests.

#### **H. Insurance**

SO shall, at its sole expense, maintain in full force and effect at all times during the Development Period, Initial Term and any Extension Period policies of insurance providing the coverages, conditions and limits set forth in **Exhibit E**. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies authorized to conduct business in the State of Colorado. Evidence of insurance, required endorsements and renewals thereof shall be provided to Subscriber in accordance with **Section 19**. Insurance coverage required herein or in the Site License shall be primary over any insurance or self-insurance program carried or maintained by Subscriber that might otherwise apply. In the event of a conflict between any insurance requirement stated in **Exhibit E** and those set forth in the Site License, the more stringent or comprehensive requirement shall apply.

## **I. Reporting.**

- i. In addition to reporting otherwise required by Xcel or the rules of the COPUC, and to the extent reporting required by Xcel or the rules of the COPUC does not require such reporting, SO shall provide at the time of Subscriber's billing in the last month of the Subscriber's Fiscal Year, an annual written report showing the performance of the CSG under this Agreement. This report shall be provided in the form of an MS Excel spreadsheet that shall show all Energy production, by month (or partial month, if there is a subscriber subscription change during any month) for each Fiscal Year following the Commercial Operation Date, and all subscriber's subscriptions reported to Xcel, and for each subscriber's subscribed meter location, it shall show both kWh-AC and the percentage of the CSG total Energy production such usage represents.
- ii. The preparation of reports required by Xcel or by this Agreement, in a reasonably timely manner or as specifically prescribed, is a material requirement of this Agreement and an uncured failure to report may be deemed a default. Whether or not declared a default, Subscriber shall not be obligated to make payment for the last month of any Fiscal Year, nor payment to reduce any Annual Shortage, until and unless the requirements of **Section 11.E.** are satisfied, which requirements included provision of an accurate annual report. All reporting to Xcel shall be available for Subscriber to review.

## **9. RIGHTS TO RENEWABLE ENERGY CREDITS**

Except to the extent otherwise expressly provided herein, Subscriber acknowledges and agrees that its Subscription pursuant to this Agreement does not include any entitlement to claim the use or benefit of the RECs associated with the Energy generated by the CSG for the Initial Term of this Agreement and any Extension Period thereof. All RECs shall be available to SO for the Initial Term and any Extension Period thereof and may be used by SO in a manner consistent with the Xcel Offer requirements. To the extent the RECs associated with the Energy generated by the CSG may be viewed to accrue to Subscriber by Xcel or otherwise, Subscriber hereby assigns such rights to SO during the Initial Term and any Extension Period.

## **10. SUBSCRIBER PAYMENTS**

From Appropriated Funds or revenue allocations otherwise made available to pay for electrical service at a Subscription location, not used for such due to monthly Xcel Billing Credits resulting from Subscriber's Subscription interest in the CSG and this Agreement, Subscriber shall pay SO, as follows:

- A.** Subscriber shall pay monthly Subscription Fees as scheduled in **Exhibit A**, which indicates the Subscription Fee per kWh-AC produced by the CSG and attributed to the Subscriber's Subscription, and are due and payable, on a monthly basis, to the extent that SO's billing indicates Xcel will provide Xcel Billing Credits equal to or greater than the scheduled Subscription Fee for the billed month and the SO has submitted a correct billing, as otherwise qualified below.
- B.** Payment in any given month, except the last month of the Subscriber's Fiscal Year which shall be governed by **Section 10.C.**, shall not exceed the total aggregated Xcel Billing Credit received for **such month** by Subscriber for Subscriber's meters designated on **Exhibit B**.
- C.** If, and only if, the total payments made in a given Fiscal Year are less than the Annual Total Subscription Fees for the same period after any adjustment in the Annual Total Subscription Fees required per **Section 8.E.** is made (the **Adjusted Annual Total Subscription Fees**), the following will occur:
  - i. The actual yearly to date and then current month Xcel Billing Credits received by Subscriber for all meters subscribed by Subscriber will be totaled, which shall be the Xcel Billing Credit Annual Total;

- ii. Second, the monthly Subscription Fees actually paid or due to be paid by Subscriber during the Fiscal Year (including the then current month) shall be totaled and subtracted from the Xcel Billing Credit Annual Total, which shall be the Xcel Billing Credit Annual Total Net; and, then,
  - iii. If and to the extent there is a positive amount in the Xcel Billing Credit Annual Total Net, which shall be the Available Annual True-Up Amount, Subscriber shall pay SO in addition to the scheduled Subscription Fee for the final month of the Subscriber's Fiscal Year, as much of the Available Annual True-Up Amount as necessary to reduce to zero (or to as low an amount as possible with the Available Annual True-Up Amount) any shortage between the Adjusted Annual Total Subscription Fees less annual actual payments made plus the Subscription Fee for the final month of the Subscriber's Fiscal Year, which shall be the Annual Shortage.
  - iv. Notwithstanding the foregoing, in calculating the Available Annual True Up Amount, Subscriber shall not be required to pay any Subscription Fees for kWh-AC production resulting from the Subscriber's Subscription for which Xcel did not provide Subscriber a corresponding Xcel Billing Credit.
- D.** At the end of the Initial Term, if no Extension Period has been agreed upon, and Subscriber's Fiscal Year end is not coincidental with such, the look-back and true-up, if any, described in **Section 10.C.** shall be similarly applied to this partial year, i.e., the period between the end of the Subscriber's Fiscal Year and the end of the Initial Term. If an Extension Period has been agreed upon, the procedure described in **Section 10.C.** shall continue uninterrupted until the end of the Extension Period, except that at the end of the Extension Period, if no further Extension Period has been agreed upon and the Subscriber's Fiscal Year is not coincidental with such, the look-back and true-up, if any, described in **Section 10.C.** shall be similarly applied to the partial year, i.e., the period between the end of the Subscriber's Fiscal Year and the termination of the Agreement.
- E.** During any Extension Period, the Subscription Fee rate to be used to calculate the total monthly Subscription Fee due to SO from Subscriber shall be as indicated on **Exhibit A.**
- F. Subscriber's Rights to Xcel Billing Credits**  
Any portion of Xcel Billing Credits not required to be paid to SO in accordance with **Exhibit A** and **Section 10.C.** shall be retained by Subscriber.
- G. Limitation on Subscriber's Duty to Pay SO**  
Except to the extent required to be paid annually by Subscriber Fiscal Year in accordance with **Section 10.C.**, Subscriber shall have no obligation at any time to pay to SO any monthly Subscription Fee amount in excess of an amount equal to the monthly Xcel Billing Credit received by Subscriber from Xcel for Subscriber meter locations designated by the Subscriber, as identified on SO's invoice. In aggregate, annually in any Fiscal Year, Subscriber shall have no obligation to pay SO more than the Subscriber has received annually in such Fiscal Year in total Xcel Billing Credits for all Subscriber meter locations identified by the Subscriber for its Subscription to the CSG. Subscribed locations at the time of entering into this Agreement and the percentage of Subscription allocated to each meter at subscribed locations are indicated in **Exhibit B** which may be modified by Subscriber from time to time.
- H. Subscriber Not Responsible For Costs and Expenses**  
Subscriber shall not be liable to SO for payment for costs or expenses incurred by SO pursuant to this Agreement. Payment pursuant to this Agreement will be made exclusively from avoided costs received by Subscriber as Xcel Billing Credits in any given Fiscal Year, and only to the extent of aggregate Xcel Billing Credits received by Subscriber in such Fiscal Year. Only upon receipt of the Xcel Billing Credits

shall Subscriber have any obligation to pay any amounts to SO. The maximum annual Subscription Fee paid to SO by the Subscriber shall be the amounts credited by Xcel to Subscriber pursuant to the Subscriber Subscription under this Agreement, at the rates scheduled in Exhibit A for kWh-AC delivered and accepted by Xcel for the benefit of Subscriber. Subscriber shall owe no other amounts or compensation of any kind or nature. No direct or indirect SO fees, costs, expenses, or taxes, incurred by SO under, or arising from this Agreement shall be payable by or the responsibility of Subscriber.

- I. During any Extension Period, the Subscription Fee rate to be used to calculate the total monthly Subscription Fee due to SO from Subscriber shall be as indicated on **Exhibit A**.

#### **11. BILLING/PAYMENT PROCEDURE**

- A. SO shall establish monthly billing procedures for the CSG and provide invoices or statements to Subscribers for payments due under this Agreement. Such will include documentation reasonably requested by Subscriber, to include at a minimum the kWh-AC supplied by SO to Xcel for each of Subscriber's subscribed meter locations. Subscriber shall be required to make payments pursuant to this Agreement only from funds available due to Xcel Billing Credits associated with its Subscription. Incorrect payments by Subscriber to SO, due to billing or payment errors or omissions, fraud, or defalcation may be recovered from SO by any means legally available to Subscriber, or alternatively, Subscriber may deduct the amount of such incorrect payments from subsequent payments of assigned amounts due under this Agreement or other contracts between Subscriber and SO.
- B. Unless Subscriber provides notice to SO of an alternate electronic means acceptable to it for receiving invoices or making payments (which notice shall specify multiple recipients), monthly invoices and monthly payments shall be mailed using the U.S. Postal Service or other delivery service, postage or delivery charges pre-paid, to the following:

Subscriber:     City of Grand Junction  
Address:        250 N. 5<sup>th</sup> Street  
                          Grand Junction, CO 81501  
                          Attention: Budget and Accounting

- C. Subscriber shall make payment in full with respect to uncontested billing for Subscription Fees within thirty (30) days of receipt of the Invoice Due Date, except in the last month of Subscriber's Fiscal Year when Subscriber shall make payment in full with respect to an uncontested billing for Subscription Fees and any true-up amount within sixty (60) days of the Invoice Due Date. Uncontested invoice amounts not paid by Subscriber within thirty (30) days or sixty (60) days, as applicable, shall bear interest on the unpaid balance beginning with the thirty-first (31st) day after payment is due at a rate of one percent (1%) per month until paid in full; provided, however, that no interest shall accrue with respect to unpaid amounts for which Subscriber has delivered to SO notice of a good faith dispute. SO shall invoice Subscriber separately for accrued interest on delinquent amounts owed. The billing shall reference the delinquent payment, the number of days interest to be paid, and the applicable interest rate. If Subscriber contests any amount on an invoice or reasonably determines that SO has failed to provide adequate documentation to support any amount on an invoice, Subscriber shall promptly give SO notice of such dispute or describe the documentation necessary to review the amount claimed within twenty-five (25) days of receipt of the invoice.
- D. If payment has not been made within thirty (30) days of the billing date of an uncontested billing, SO shall provide Subscriber with an additional written notice. If payment has not been received within an additional thirty (30) days after giving such notice, SO may, to the extent permitted by the Xcel agreements with the SO or the terms of the Xcel Offer, permanently or temporarily cease allocating

Energy to Subscriber for its Subscription and advise Xcel that the Subscription amount is unsubscribed, or SO may, at its option, terminate this Agreement (subject to the requirements of **Section 17.A.**) and transfer the Subscription to another Qualified Subscriber (or another subscriber regardless whether a Qualified Subscriber to the extent a Qualified Subscriber cannot be located and such subscriber is acceptable to other subscribers) or advise Xcel the Subscription is unsubscribed pending such a transfer.

- E. The Invoice Due Date for the last month of the Subscriber's Fiscal Year shall be the date an accurate billing is received together with (i) a correct and accurate adjustment per **Section 8.E.**; (ii) a correct, complete, and accurate annual report as required in **Section 8.I.i.**; and (iii) a correct, complete, and accurate true-up analysis as required pursuant to **Section 10.C.**

## **12. SUBSCRIPTION RESTRICTIONS**

- A. SO agrees that, with the exception of five percent (5%) of the total subscriptions required by the terms of the Xcel Offer, the Xcel Agreements, or by law to be provided to income-qualified subscribers, all other subscriptions at the CSG shall only be provided to and held by Qualified Subscribers where such other Qualified Subscribers are available and willing to subscribe in the CSG. Subscriptions shall be offered to any replacement Qualified Subscriber with Subscription Fees identical with Subscription Fee rates scheduled in **Exhibit A** and as provided in **Section 10**, for any given year of Commercial Operation. SO may offer subscriptions to other subscribers at commercially viable and agreed terms when, but only when, Qualified Subscribers are unavailable or unwilling to subscribe in the CSG. SO further agrees that it shall include in all subscription agreements it enters into with respect to the CSG, regardless of whether the subscriber is or is not a Qualified Subscriber, a requirement that no subscription may be sold, assigned or transferred for any reason; and, except with respect to transfers and assignments permitted under **Section 21.C.** between Qualified Subscribers where such replacement Qualified Subscribers are approved by SO and which approval shall not be unreasonably denied, subscriptions may only be transferred back to SO for reallocation.
- B. Each Qualified Subscriber shall have a right of first refusal to subscribe to all or any portion of a subscription that is transferred back to SO or that is otherwise available for reallocation to a Qualified Subscriber, but no Qualified Subscriber may exercise such right to cause its subscription in the CSG to exceed the maximum permitted by law. SO shall give written notice to each Qualified Subscriber if and when a subscription interest is available for reallocation, whereupon Qualified Subscribers shall have thirty (30) days from the date such notice is received to exercise such right of first refusal by written notice to SO. In the event more than one Qualified Subscriber exercises its right of first refusal with respect to the same subscription offered for reallocation, such interest shall be allocated among the Qualified Subscribers exercising their first refusal rights in equal shares if feasible, unless said Qualified Subscribers agree in writing to some other allocation.
- C. The designation of meters at specific retail customer locations as described in **Exhibit B** may, however, be changed by a Subscriber by Option Letter as more specifically described in **Section 8.F.xi.** to allow for the change of or at a specific meter location, or for other business reasons, provided Subscriber substitutes a comparable replacement meter location, as described in **Section 8.F.xi.** Comparable replacements shall provide for equivalent or better kWh-AC usage at tariffs producing equivalent or better Xcel Billing Credits. A comparable replacement may also be achieved by reallocation of the percentage of kWh-AC subscribed at a meter location, provided the net result provides equivalent or better ability to pay Subscription Fees in aggregate than those provided in the Subscription before a change of a retail customer location.
- D. Subscribers shall not advertise nor market subscriptions for sale or assignment, and all subscription agreements entered into by SO shall provide that subscriptions shall not be advertised for sale or assignment by any subscriber. All rights in subscriptions are personal to the subscriber, and except as

expressly otherwise provided herein, shall revert to SO upon abandonment, sale, or a transfer or assignment not approved by the SO and consistent with the terms of this Agreement. Except in the case of an Event of Non-Appropriation under Section 14, and with respect to permitted meter substitutions, any such abandonment, or attempt at sale or transfer, shall not alter Subscriber's obligations to pay scheduled Subscription Fees as herein conditioned.

### 13. LENDER RIGHTS

- A. Subscriber acknowledges that SO may finance the acquisition, development, installation, operation or maintenance of the CSG, and that any financial institution, as lender to SO for the financing of the CSG, may require SO to secure its obligations by a pledge or collateral assignment of this Agreement. Subscriber agrees to cooperate, at the request of Lender, and take any action not inconsistent with this Agreement reasonably requested by Lender to perfect its interests in this Agreement.
- B. Subscriber agrees to deliver duplicates or copies of all notices of default delivered by Subscriber under or pursuant to this Agreement to Lender simultaneously with delivery thereof to the SO under the Agreement, so long as Lender has provided to Subscriber and SO, evidence of Lender's interest in the CSG and current Lender notice information.
- C. In the event that a Lender chooses to exercise the rights and remedies of SO under this Agreement, Lender shall pay all sums due to Subscriber under this Agreement and perform any other act, duty or obligation required of SO under this Agreement (including without limitation the obligations of SO as Licensee under the Site License) or cause to be cured any default of SO hereunder in the time and manner provided by the terms of this Agreement, provided, however, that nothing herein shall require Lender to cure any default of SO under this Agreement (unless Lender has succeeded to SO's interests under this Agreement or otherwise elected to exercise the rights and remedies of SO) or to perform any act, duty or obligation of SO under this Agreement.
- D. Prior to the exercise of remedies under any agreements or instruments creating Lender's security interest in the CSG, including any sale of the CSG by Lender, whether by judicial proceeding or under any power of sale contained therein, or by any conveyance from SO to Lender, Lender shall give thirty (30) days' advance written notice to Subscriber.
- E. In the event a Lender elects to exercise the rights and remedies of SO or its remedies under any agreement or instruments creating the Lender's security interest in the CSG, it shall do so using a Qualified Assignee, except where the obligations of SO are financial in nature and of the type typically undertaken by financial institutions. **Qualified Assignee** shall mean a proposed or actual assignee or transferee of SO's rights and obligations under this Agreement pursuant to a transfer by any means including by judicial proceeding or power of sale under any agreements or instruments creating Lender's security interest, in connection with which SO, or its successor, has provided to subscribers reasonable proof that such proposed or actual assignee or transferee: (a) has comparable ability, personnel and successful experience to that of SO in operating and maintaining photovoltaic systems comparable to the CSG; (b) has the financial and logistical capability to maintain, repair, operate and remove (or finance, design, construct, operate and maintain if prior to the Commercial Operations Date), the CSG in accordance with the requirements of this Agreement and the Site License; (c) has provided a performance bond as required by the Site License; and (d) shall assume in writing all of SO's obligations under this Agreement, the Site License and under any other then current subscription agreements applicable to the CSG, including any accrued obligations at the time of the assignment or transfer.

### 14. FUNDING FOR THIS AGREEMENT

- A. While this Agreement will extend beyond the current state fiscal year or the funding year of a Political Subdivision, the Parties understand and agree that any obligation on the part of Subscriber to pay SO in

any given future fiscal or funding year constitutes a then-current year expense of Subscriber, payable exclusively from Subscriber's then-current annual appropriation or allocation. Payment agreed to under this Agreement is contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. This Agreement shall not in any way be construed to be a general obligation indebtedness of the Subscriber within the meaning of any provision of the Colorado Constitution, or any other constitutional or statutory limitation or requirement applicable to the Subscriber. The act of appropriation for Subscriber's payment obligations under this Agreement is an act solely within the discretion of the Subscriber's Legislative Authority, and such discretion may be exercised individually with respect to each subscribed retail customer location identified in **Exhibit B** to this Agreement (or as such may be later modified by Option Letter). No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of moneys of the Subscriber. Neither Subscriber, nor SO on its behalf, has pledged the full faith and credit of the Subscriber or its Legislative Authority, and this Agreement shall not directly or contingently obligate Subscriber or its Legislative Authority to apply funds, or levy or pledge any form of taxation, to the payment of any amounts payable by Subscriber beyond those appropriated and allocated, or otherwise made available, in the then-current Fiscal Year.

- B.** Subscriber represents that it currently includes in its annual budget an amount estimated to be sufficient, if appropriated, to pay for utilities, including electrical service at prevailing electrical rates for all subscribed retail customer locations identified in **Exhibit B** to this Agreement (or as such may be later modified by Option Letter), and intends to continue to do so during the Initial Term and any Extension Period, subject to annual appropriation as set forth in **Section 14.A.** above. Subscriber shall promptly notify SO in writing if for any reason sufficient funds will not be available for a given Fiscal Year during the Initial Term for any subscribed retail customer location.
- C.** In the event, however, in any given Fiscal Year, an Appropriation or revenue allocation is not made to fund the utilities at any subscribed retail customer location or such Appropriation or revenue allocation is reversed or rescinded at any retail customer location subscribed herein, the Parties' obligations with respect to any retail customer location subject to such Event of Non-Appropriation may be terminated upon written notice to SO by the Subscriber. Alternatively, at the election of SO, obligations with respect to that portion of the Agreement subject to an Event of Non-Appropriation may be suspended upon notice until such time as the Subscriber's Legislative Authority appropriates, allocates revenue, or otherwise makes available funds to pay amounts due hereunder (such notice constituting an Event of Suspension), or until SO gives notice to rescind such suspension, in which case the termination shall be effective. If an Appropriation or other revenue allocation is made, Subscriber shall give notice to SO and any suspension shall be rescinded. In either event, Subscriber shall not be obligated to make any remaining payments due with respect to such retail customer location after its then-current Fiscal Year.
- D.** Following an Event of Non-Appropriation, if Subscriber terminates this Agreement in whole or in part, SO agrees to act diligently to replace the Subscriber's Subscription or the terminated portion of such Subscription with another Qualified Subscriber in the Xcel Service Territory in Mesa County meeting all requirements of law, COPUC rules and the Xcel Offer. Subscriber may alternatively terminate this Agreement in whole or amend the Agreement in part with respect to one or more retail customer locations, and transfer, by assignment, its terminated obligations and benefits under this Agreement to another Qualified Subscriber pursuant to **Section 12 and 21.C.** In doing so, Subscriber shall give notice to SO of its proposed assignment of all or a portion of this Agreement and Subscriber's proposed replacement Qualified Subscriber, providing SO with sufficient information to allow SO to determine the replacement Qualified Subscriber can meet Xcel requirements for identification and contracting purposes. The proposed assignment of this Agreement to a replacement Qualified Subscriber by Subscriber must be effected with the same formality indicated by this Agreement, but shall not be unreasonably delayed, conditioned or denied by SO. During any period that Subscriber is unable to



meet its obligation to pay SO, SO shall have the right, without terminating this Agreement, to use any benefit of the Subscriber's Subscription to generate income, and, to the extent permitted by the rules of Xcel or the COPUC, to continue to deliver Energy associated with Subscriber's Subscription to Xcel as if it is fully subscribed, or as unsubscribed interests. Any Event of Non-Appropriation shall result in the Subscriber's Fiscal Year being deemed ended with respect to the retail customer location affected for purposes of Section 10 payments.

**15. REPRESENTATIONS AND WARRANTIES; COVENANTS**

- A. SO represents and warrants that it has received an RFP award from Xcel, and has or will have sufficient qualified personnel, funding, and expertise to design, construct, finance, operate and maintain the CSG, or in and perform its obligations as a subscriber organization in accordance with the Xcel Offer, this Agreement and applicable laws and regulations.
- B. SO represents and warrants that it has obtained or will promptly acquire all necessary governmental approvals or permits necessary for the construction and operation of the CSG on the property specified in the Site License, that the CSG will be built in accordance with the plans and specifications submitted to governmental agencies or authorities in connection with the issuance of such approvals and permits, and that SO will at all times comply with the terms and conditions of the Conditional Use Permit and incorporated site development plan attached as Exhibit H, as well as any and all applicable federal, state and local land use or environmental laws or regulations. SO further represents and warrants that the Energy produced at and by the CSG shall only be sold to Xcel during the term of this agreement and that, in exchange for doing so, Subscriber and other subscribers will receive Xcel Billing Credits and Energy shall be used for no other purposes (other than maintenance and operation of the CSG).
- C. SO represents and, to the extent permitted by law, warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind SO to its terms.
- D. Subscriber represents and, to the extent permitted by law, warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind Subscriber to its terms.
- E. SO represents and warrants that neither it, nor any Affiliate, will sell subscriptions except to required income-qualified subscribers, and will not in any circumstance sell or create securities or shares in the CSG, or permit any other Person to resell Subscriptions, in whole or part. SO represents and warrants that except for permitted transfers between Qualified Subscribers, subscriptions may only be transferred from a subscriber to SO, and all of its subscription agreements for the CSG shall so limit transfers. SO agrees not to knowingly take any action that would cause any subscription or any other interest of a subscriber to be deemed a security under or subject to the Securities Act of 1933 or any other state or federal securities laws, without regard to whether registration would be required or the subscription or any other interest of a subscriber would qualify for an exemption from registration under said act or any applicable state or federal securities laws. SO represents and warrants that it has no knowledge of, or other reason to believe, that a Subscription in the CSG will be, or is likely to be, deemed a security. SO covenants that it will promptly inform Subscriber during the Term of this Agreement in the event it has any basis to believe that Subscriber's Subscription or any interest of a subscriber in the CSG will be, or has been, deemed, a security under or subject to the Securities Act of 1933 or any other state or federal securities laws. SO agrees that in the event any Subscription at the CSG is deemed or alleged in any civil action to be a security, Subscriber shall have the right, but not the obligation, to terminate this Agreement, and SO shall indemnify and hold harmless Subscriber from any and all claims, liabilities or losses so

arising and shall at Subscriber's request provide a defense for Subscriber by counsel of Subscriber's choosing at SO's expense.

- F. SO represents and warrants that it is familiar with and capable of performing and/or satisfying all of the requirements of Xcel related to the CSG and that it shall at all times comply with the terms and conditions set forth in Xcel's requirements, the Xcel Offer or its rules and regulations; perform and be solely responsible for any and all obligations to Xcel; and indemnify Subscriber, to the extent permitted by law, from and against any claim, loss, demand, liability, injury arising from, or other consequences of, SO's failure to do the same.
- G. SO represents and warrants that during the term of this agreement, Energy produced at and by the CSG shall be used for no other purposes other than maintenance and operation of the CSG or as may otherwise be permitted by the Xcel Offer, the COPUC rules and this Agreement, and further that the Energy shall be sold and delivered only to Xcel, its successor or any permitted assignee directed by Xcel.
- H. SO represents and warrants that it shall exercise best efforts to ensure that the CSG stays at all times fully subscribed by Qualified Subscribers to the greatest extent permitted by the Xcel Offer rules and the rules of the COPUC; provided, however, that SO may reasonably over-subscribe income-qualified subscribers or provide subscriptions to income-qualified subscribers at more advantageous terms to the extent reasonably necessary to maintain the required minimum level of such subscriptions at five percent (5%). SO further represents and warrants that it will not provide CSG subscriptions to Persons other than Qualified Subscribers except where, after an Event of Non-Appropriation, neither Subscriber nor SO has successfully transferred obligations under this Agreement to another Qualified Subscriber pursuant to Sections 12. and 13.D. With the exception of proposed subscriptions with income-qualified subscribers, with respect to which Subscriber may not unreasonably withhold consent, Subscriber may otherwise withhold consent in its reasonable discretion so long as Subscriber is not in default under this Agreement.
- I. Subscriber represents and warrants that it requires electric service at its schools and facilities, located within Xcel service territory, including those designated in Exhibit B hereto, that such requirement will continue for the foreseeable future, and that such foreseeable need is and, to the best of its knowledge, will remain at or in excess of twenty-three percent 23% of the electrical power and energy capable of being generated by the proposed Community Solar Garden.

## 16. DEFAULT

- A. A Party shall be in default under this Agreement upon (i) a failure to perform or comply with any of the terms and conditions of this Agreement, including breach of any covenant contained herein, unless such failure is corrected or cured within thirty (30) days after written notice to such Party demanding that such failure to perform or comply be cured (unless a different period is expressly provided by this Agreement with respect to such failure), or within such longer period as is reasonably necessary under the circumstances provided that curative or corrective action has commenced within such thirty (30) day period and is being diligently pursued to completion without interruption or unreasonable delay; (ii) any representation or warranty furnished by such Party in this Agreement is false or misleading in any material respect when made; or (v) any uncured default by such Party under any Xcel Agreement required for the other Party to perform its obligations under this Agreement or to receive Xcel Billing Credits under this Agreement. In addition, SO shall be in default upon the occurrence of any event of default by SO under the Site License.

## 17. TERMINATION

This Agreement may be terminated by either Party in the event SO, for any reason, shall fail to obtain or loses its right to operate the CSG, including but not limited to termination of its right to use or access the property where the CSG is located.

A. Subscription Organization shall have the right, but not the obligation, to terminate this Agreement by written notice to Subscriber if Subscriber shall be in default under this Agreement, including without limitation in the event of non-payment after notice as provided in Section 11.D. In the event of termination by SO, SO shall have the right to unilaterally transfer Subscriber's Subscription or that portion so terminated to another Qualified Subscriber in the Xcel Service Territory, or to another subscriber if no Qualified Subscriber is available and willing to enter a subscription agreement, subject to the restrictions in Section 12 above.

B. Subscriber shall have the right, but not the obligation, to terminate this Agreement by written notice to SO if SO shall be in default under this Agreement, or under any Xcel Agreement where such default results in termination of an Xcel Agreement, or pursuant to Sections 7, 14.D. and 15.E.

#### 18. REMEDIES

In addition to any other remedies provided for in this Agreement, Subscriber and SO shall be entitled to all remedies available at law or in equity, except to the extent expressly limited herein. The Parties hereto agree to exhaust any administrative remedies required by applicable statute, ordinance, rule (including without limitation such administrative remedies and procedures as exist for Political Subdivisions) or policy, prior to commencing any actions at law. Nothing herein shall prevent either Party hereto from seeking injunctive relief at any time.

#### 19. REPRESENTATIVES AND NOTICES

The individuals identified below are the designated representatives of the Parties. All notices required to be given to a Party pursuant to this Agreement shall be hand delivered with receipt required or sent by certified or registered mail, signature of receipt required, to the representative at the address for such named Party set forth below. Either Party or the Lender may, from time to time, designate by written notice substitute addresses or persons to whom such notices shall be sent. Other communications or as an additional means of communicating a formal notice, may be sent using e-mail, with a confirmation of receipt and read functions activated in the transmission.

##### For the Subscriber:

Name: Jay Valentine  
Internal Service Manager  
City of Grand Junction

Address: 250 N. 5<sup>th</sup> Street  
Grand Junction, CO 81501

##### With copy(i)es to:

Name: John P. Shaver, Esq.  
Address: 250 N. 5<sup>th</sup> Street  
Grand Junction, CO 81501

##### For Subscription Organization:

Name: Erik Stuebe  
President  
Fresh Air Energy VIII, LLC

Address: 650 Townsend Street; Suite 310  
San Francisco CA 94103  
Office: (415) 626-1802

#### 20. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work of any type, including drafts, prepared by SO in the performance of its obligations under this Agreement shall be with the Subscriber upon request, but Subscriber shall confine any copying or other use to review and analysis purposes, implementation or enforcement of this Agreement and/or assessment of SO performance..

## 21. GENERAL PROVISIONS

- A. Compliance with Applicable Law.** Each Party, their contractors and subcontractors, assigns and Affiliates, if any, shall at all times during the term of this Agreement strictly adhere to, and comply with, all applicable Federal and State of Colorado laws, and their implementing rules and regulations, as they currently exist and may hereafter be amended.
- B. Taxes.** Qualified Subscriber's tax exempt status does not extend to the activities of SO, and SO shall not rely on any Subscriber tax exempt status to relieve SO from taxes due for its activities, purchases or sales under this Agreement.
- C. Assignment and Successors.**
- i. With the exception of collateral transfers or contingent assignments to Lenders, Subscription Organization shall not transfer, assign, or subcontract, its rights and obligations under this Agreement other than to an Affiliate of SO, without the prior, written consent of Subscriber, which consent shall not be unreasonably withheld with respect to a Qualified Assignee as defined in Section 13.E., provided however, that any such assignee or transferee shall have assumed all of the obligations of the SO under this Agreement, including without limitation, its indemnity and insurance obligations.
  - ii. Subscriber shall not transfer, assign, or subcontract, its rights and obligations under this Agreement other than to one or more other Qualified Subscribers without the prior, written consent of SO, which consent shall not be unreasonably withheld. Subscriber shall have both the right to transfer or assign this Agreement in whole or in part to a Qualified Subscriber and the obligation to attempt to transfer or assign this Agreement in whole or in part to a Qualified Subscriber, following an Event of Non-Appropriation. Following assignment or transfer of this Agreement by Subscriber to one or more Qualified Subscribers, or any other subscriber approved by SO in exercise of its reasonable discretion, or following a good faith attempt at such assignment or transfer following an Event of Non-Appropriation, Subscriber shall be relieved of and discharged from all obligations hereunder, or if such assignment or transfer is not of Subscriber's complete Subscription, to the extent of the portion assigned or transferred or for which a good faith attempt to transfer was undertaken.
- D. Limitation of Liability.** Other than the indemnification obligations and liability provisions provided elsewhere in this Agreement, including without limitation, obligations and liability for personal injury, death, and property damage addressed, but not limited by required insurances, and except as otherwise expressly provided to the contrary herein, neither Party is liable to the other for any consequential, incidental, indirect or special damages, including commercial loss, however caused and regardless of legal theory or predictability, which directly or indirectly arises under this Agreement.
- E. Indemnification.** SO shall indemnify, defend, and hold harmless Subscriber, its Legislative Authority, elected officials, employees, agents, successors and assigns, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by SO, or its employees, agents, contractors, subcontractors, or assignees pursuant to the terms of this Agreement, or as a result of any breach of any covenant or warranty herein, or the termination of this Agreement for reasons other than nonperformance under this Agreement. To the extent permitted by law, SO's duty to indemnify, defend and hold harmless shall extend to all claims, liabilities and losses incurred by any indemnified party arising from the acts or omissions or breach of contract by any other former or current subscriber to the CSG or any Person with whom SO contracts for access to or use of the CSG site. Notwithstanding the foregoing, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the

immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-201, et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671, et seq., as applicable, as now or hereafter amended.

- F. Venue.** SO agrees it shall submit voluntarily to the jurisdiction of the Federal and State of Colorado courts in the State of Colorado, and that this Agreement shall be subject to and interpreted under the laws of the State of Colorado, and the court venue shall be the District Court in and for Mesa County, Colorado.
- G. Entire Understanding.** This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved by the Parties.
- H. Severability.** Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.
- I. Survival of Certain Agreement Terms.** Notwithstanding anything herein to the contrary, all terms and conditions of this Agreement which may require continued performance, compliance, or effect beyond the expiration or earlier termination of this Agreement, shall survive such expiration or termination, whether or not such survival is expressly provided for herein, and shall be enforceable by a Party in the event of the other Party's failure to perform or comply as required.
- J. Modification and Amendment.** This Agreement is subject to such modifications as may be required by changes in Federal or State of Colorado law, or their implementing regulations, including without limitation rules adopted by the COPUC. Except as specifically provided in this Agreement, no modification of this Agreement shall be effective unless agreed to in writing by the Parties in an amendment to this Agreement, properly executed and approved in accordance with Colorado law.
- K. Binding Effect.** Except as otherwise provided in this Agreement, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.
- L. Captions.** The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.
- M. Counterparts.** This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.
- N. Third Party Beneficiaries.** Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.
- O. P. Waiver.** Waiver of any breach under a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

## 22. COLORADO SPECIAL PROVISIONS

The Agreement shall include the following Special Provisions. Any reference to the ,Contractor~~f~~ in such provisions shall refer to the SO. In the event of conflicts or inconsistencies between this Agreement and the following Special Provisions, the Special Provisions shall control:

- A. **Governmental Immunity.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671, *et seq.*, as applicable now or hereafter amended.
- B. **Independent Contractor.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State of Colorado. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State of Colorado and the State of Colorado shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State of Colorado to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State of Colorado, and (iii) be solely responsible for its acts and those of its employees and agents.
- C. **Compliance With Law.** Contractor shall strictly comply with all applicable Federal and State of Colorado laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- D. **Choice Of Law.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
- E. **Software Piracy Prohibition.** No public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of Federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the Subscriber determines that Contractor is in violation of this provision, the Subscriber may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with Federal copyright laws or applicable licensing restrictions.
- F. **Employee Financial Interest.** The signatories represent and warrant that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**G. Public Contracts For Services.** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to C.R.S. §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State of Colorado agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State of Colorado agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or C.R.S. §8-17.5-101, *et seq.*, the contracting State of Colorado agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

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23. SIGNATURES.

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

Persons signing for SO hereby swear and affirm that they are authorized to act on SOs behalf and acknowledge that the Subscriber is relying on their representations to that effect. Principal is not a recognized title and will not be accepted.

SUBSCRIPTION ORGANIZATION:

FRESH AIR ENERGY VIII, LLC

SUBSCRIBER:

CITY OF GRAND JUNCTION

By  \_\_\_\_\_  
Erik Stuebe, President

Date: \_\_\_\_\_  
April 9th, 2014

By  \_\_\_\_\_  
Rich Englehart, City Manager

Date: \_\_\_\_\_  
4/15/14



**EXHIBIT A**  
**SUBSCRIBER FEE & PRODUCTION SCHEDULE**

	[Column A]	[Column B]	[Column C]	[Column D]	[Column E]	[Column F]
	Subscription Fee (\$/kWh-AC) <sup>2</sup>	Projected Total CSG Production (kWh-AC)	Minimum Total CSG Production (kWh-AC) <sup>3</sup>	City's Share of Total CSG Production	City's Projected Subscription Production (kWh-AC) [Column C] times [Column E]	City's Minimum Subscription Production (kWh-AC) [Column D] times [Column E] <sup>1</sup>
Year 1 <sup>1</sup>	\$0.06750	3,571,643	3,035,897	23.00%	821,478	698,256
Year 2	\$0.06851	3,553,785	3,020,717	23.00%	817,371	694,765
Year 3	\$0.06954	3,536,016	3,005,613	23.00%	813,284	691,291
Year 4	\$0.07058	3,518,336	2,990,585	23.00%	809,217	687,835
Year 5	\$0.07164	3,500,744	2,975,632	23.00%	805,171	684,395
Year 6	\$0.07272	3,483,240	2,960,754	23.00%	801,145	680,973
Year 7	\$0.07381	3,465,824	2,945,951	23.00%	797,140	677,569
Year 8	\$0.07491	3,448,495	2,931,221	23.00%	793,154	674,181
Year 9	\$0.07604	3,431,253	2,916,565	23.00%	789,188	670,810
Year 10	\$0.07718	3,414,096	2,901,982	23.00%	785,242	667,456
Year 11	\$0.07834	3,397,026	2,887,472	23.00%	781,316	664,119
Year 12	\$0.07951	3,380,041	2,873,035	23.00%	777,409	660,798
Year 13	\$0.08070	3,363,141	2,858,669	23.00%	773,522	657,494
Year 14	\$0.08191	3,346,325	2,844,376	23.00%	769,655	654,206
Year 15	\$0.08314	3,329,593	2,830,154	23.00%	765,806	650,935
Year 16	\$0.08439	3,312,945	2,816,003	23.00%	761,977	647,681
Year 17	\$0.08566	3,296,380	2,801,923	23.00%	758,168	644,442
Year 18	\$0.08694	3,279,899	2,787,914	23.00%	754,377	641,220
Year 19	\$0.08825	3,263,499	2,773,974	23.00%	750,605	638,014
Year 20	\$0.08957	3,247,182	2,760,104	23.00%	746,852	634,824
<b>Total</b>		<b>68,139,462</b>	<b>57,918,543</b>		<b>15,672,076</b>	<b>13,321,265</b>

**Footnotes:**

<sup>1</sup> Year 1 begins on Commercial Operation Date; for example, if the Commercial Operation Date is August 1, 2014, Year 1 begins on August 1, 2014 and ends on July 31, 2015.

<sup>2</sup> Beginning Year 2, Subscription Fee escalates annually at the rate of: 1.50%

<sup>3</sup> As referenced in Section 8.E. of the Subscription Agreement

**Sample Calculation of Annual Total Subscription Fees:**

Assuming CSG production is as projected for Year 1, City's Year 1 Annual Total Subscription Fees would be calculated as follows:

Year 1 Subscription Fee rate (\$0.06750/kWh-AC)[Column A] times City's share of production (821,478kWh-AC) [Column E] equals \$55,449.76

The foregoing calculation is intended for illustrative purposes only. The City's obligation to pay Subscription Fees is at all times governed by and subject to the provisions of the Subscription Agreement.

**EXHIBIT B**  
**SUBSCRIBER DESIGNATION OF SUBSCRIBED ACCOUNTS**

Account Name and Street Address	Xcel Account Number	Xcel Premise Number	KW Subscribed <sup>1</sup>	Percent of District's Subscribed Accounts	Percent of CSG <sup>2</sup>
2410 G RD APT BALL	53-1286004-9	300062424	73.024	15.88%	3.65%
546 28 1/4 RD	53-1286004-9	300029603	35.810	7.79%	1.79%
2068 S BROADWAY APT PUMP	53-1286004-9	300084938	19.910	4.33%	1.00%
LINCOLN PK GOLF CRSE 3RD HOLE	53-1286004-9	300066467	38.840	8.44%	1.94%
2057 S BROADWAY	53-1286004-9	300013697	34.510	7.50%	1.73%
2410 G RD	53-1286004-9	300168483	50.649	11.01%	2.53%
2935 ORCHARD AV	53-1286004-9	304004716	35.130	7.64%	1.76%
333 WEST AVE	53-9899620-2	304235086	84.660	18.41%	4.23%
2057 S BROADWAY UNIT PUMP	53-1286004-9	300001221	87.420	19.01%	4.37%
<b>Total</b>			<b>459.95</b>	<b>100.00%</b>	<b>23.00%</b>

**Footnotes:**

<sup>1</sup> KW Subscribed as indicated on SRC Subscriber Agency Agreements

<sup>2</sup> Based on 1,999.8 kW-DC CSG

## SRC SUBSCRIBER AGENCY AGREEMENT

### FOR XCEL ENERGY SOLAR\*REWARDS COMMUNITY SERVICE (COLORADO)

SRC Subscriber Name: \_\_\_\_\_

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

SRC Subscriber Service Address: \_\_\_\_\_  
\_\_\_\_\_

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

SRC Subscriber Mailing Address: \_\_\_\_\_

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

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

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

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

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): \_\_\_\_\_ kW

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

1. Duties of SRC Producer Generally. SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. Adjustments of Prior Period SRC Bill Credits. To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription

information for the PV System communicated to Public Service by SRC Producer. In connection with SRC Producer's execution of its responsibilities to process any such adjustments to SRC Credits previously applied by Public Service with respect to the PV System, SRC Subscriber hereby authorizes Public Service to disclose and release to SRC Producer any and all information reflected on SRC Subscriber's bills for retail electric service for all relevant periods, as may be necessary for SRC Producer to fully and properly administer such prior period adjustments among all SRC subscribers in the PV System.

3. Limitation of Agency. This Agency Agreement shall only serve to authorize SRC Producer to act as SRC Subscriber's agent with respect to SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service to the extent that SRC Subscriber's subscription continues from time-to-time to qualify as a valid subscription in the PV System in accordance with Section 40-2-127, C.R.S., the effective rules and regulations promulgated thereunder by the Colorado Public Utilities Commission, and Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

4. Term of Agency and Termination. (a) This Agency Agreement shall become effective upon its execution by both SRC Subscriber and SRC Producer and shall continue in effect for so long as a valid and existing contract between Public Service and SRC Producer for the purchase and sale of such Photovoltaic Energy and associated Renewable Energy Credits shall continue in effect.

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

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

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

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

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

**SRC SUBSCRIBER**

**SRC PRODUCER**

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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

**EXHIBIT D  
OPTION LETTER**

**MESA COUNTY COMMUNITY SOLAR GARDEN OPTION LETTER**

**1) OPTIONS:** *[Choose all applicable options listed and delete the rest, along with this instruction.]*

- a. Change in the allocation percentage(s) for Subscriber's subscribed meters.
- b. Change in meter locations allocated to Subscriber's subscription.
- c. Change in allocation percentage(s) for Subscriber's subscribed meters and change in meter locations allocated to Subscriber's subscription.

**2) REQUIRED PROVISIONS:**

- a. Subscriber Name hereby elects to make one or more of the changes specified in Paragraph 1 above and as specified in the attached revision to Exhibit B to the original Subscription Agreement.
- b. The amount of the current Fiscal Year contract value is unchanged. The total amount payable under this Agreement shall not exceed the total Xcel Billing Credits received in the current Fiscal Year for meters allocated to the Subscriber's Subscription.

**3) Effective Date.** The effective date of this Option Letter is upon approval of the appropriate person or persons with similar approval authority for contracts) or Effective Date, whichever is later.

*[The signature block below shall be modified as appropriate in the case of Political Subdivisions]*

<b>NAME OF SUBSCRIBER</b>
NAME, TITLE
_____ By: INSERT-Name of Authorized Individual, INSERT-Official Title of Authorized Individual
Date: _____

## **EXHIBIT E INSURANCE REQUIREMENTS**

### **Commercial General Liability**

SO shall maintain Commercial General Liability Insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury with minimum limits as follows: (i) \$4,000,000 each occurrence; (ii) \$4,000,000 general aggregate; (iii) \$2,000,000 products and completed operations aggregate; and (iv) \$100,000 any one fire. If any aggregate limit is reduced below \$4,000,000 because of claims made or paid, Contractor or Subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish a certificate or other document satisfactory to the Subscriber showing compliance with this provision.

### **Personal/Real Property Insurance**

SO shall maintain Personal Property insurance covering the CSG, Site Improvements, and all of Contractor's solar panels, hardware, cabling, equipment, trade fixtures, appliances, furniture, furnishings, and other personal property installed, stored or otherwise present from time to time in, on, or upon the premises licensed under the Site License in an amount not less than the full replacement cost without deduction for depreciation.

### **Workers' Compensation Insurance**

SO shall have Workers' Compensation Insurance in accordance with scope and limits as required by the State of Colorado.

### **Employer's Liability**

SO shall maintain Employer's Liability Insurance with minimum limits of \$500,000 per occurrence.

### **Automobile Liability**

SO shall maintain Comprehensive Automobile Liability insurance including "B" extension (uninsured motorists), with minimum limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per accident.

### **Additional Insured**

The Subscriber shall be named as additional insured on all Commercial General Liability policies, including additional insured coverage for completed operations. All such policies shall provide that the additional insured shall not be reason of inclusion as an additional insured incur any liability to the insurance carrier for the payment of any premiums, and shall include clauses stating that evidence of insurance and required endorsements, and renewals thereof, shall be provided to any subscriber named as an additional insured.

### **Primacy of Coverage**

Coverage required of SO shall be primary over any insurance or self-insurance program carried by Subscriber.

### **Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to SO and Subscriber.

### **Subrogation Waiver**

All insurance policies in any way related to this Agreement and secured and maintained by Contractor or its Subcontractors as required herein shall include clauses stating that each carrier waives all rights of recovery, under subrogation or otherwise, against the Subscriber, its officers, agents, employees, and volunteers.

### **Certificates**

SO shall provide certificates showing insurance coverage required hereunder to the Subscriber within seven (7) business days of achieving Commercial Operations. No later than fifteen (15) days prior to the expiration date of any such coverage, SO shall deliver to the Subscriber certificates of insurance evidencing renewals thereof.

**SITE LICENSE AGREEMENT  
(Mesa County Valley School District No. 51)**

This **SITE LICENSE AGREEMENT** ("Agreement") is made, dated, and effective as of August 7, 2013 (the "Effective Date") by and between the **MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51** ("District"), and **ECOPLEXUS, INC.**, a Delaware corporation ("Licensee"). Each of District and Licensee is sometimes referred to as a "Party" and collectively as the "Parties."

**RECITALS**

A. District is the owner of certain unimproved real property located in Mesa County, Colorado, as more particularly described on the attached Exhibit A and incorporated herein by this reference (the "Property").

B. Licensee is in the business of developing and operating solar photovoltaic energy facilities and related equipment (each, a "PV System") for the generation of electrical energy.

C. Licensee desires to obtain from District a license to access and use the Property, for the installation, operation, repair, maintenance, and removal, from time to time, of a PV System constituting a Community Solar Garden (as defined in Colorado Revised Statutes (C.R.S.) § 40-2-127(2)(b)(I)(A)) (a "Solar Garden"), as generally depicted on the attached Exhibit B and incorporated herein by this reference.

D. District desires to grant Licensee such a license upon the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to facilitate the installation, maintenance and operation of the Solar Garden, the Parties agree as follows:

1. **Grant of License; Nature of License.** District hereby grants to Licensee a license to use the Property for the term set forth in Section 2 below, which license shall be subject to and limited by the terms and conditions set forth herein (the "License"). Throughout the Development Period, Term and any Renewal Term (each as defined in Section 2.1), such license shall permit use of the Property solely for the purposes set out in Section 3.2 below and no other purposes, unless otherwise authorized in writing by the District.

1.1. District reserves the right to grant to other persons or entities the right to operate other photovoltaic, solar power plants in or at other locations within the District, and Licensee understands and agrees that its right to operate an electricity grid-connected photovoltaic, solar power plant within District is not exclusive. Further, District reserves to itself, its successors and assigns, the right to grant leases, easements and rights of way over, across, and under the Property after the Effective Date for utilities, cell tower, and other uses, so long as such leases, easements and rights of way do not interfere with Licensee's use right in violation of Section 3.6 herein.

1.2. The Parties agree that neither this Agreement nor the License granted herein shall create or convey to Licensee any leasehold or other estate, easement, right-of-way, or other property right or ownership interest in or to the Property and that all equipment or property placed on the Property by Licensee or its employees, suppliers, contractors or agents in connection with the Solar Garden shall be and remain Licensee's personal property and shall not be considered part of or a permanent improvement or fixture to the Property.

1.3. Licensee and its agents, employees, contractors and suppliers shall have, as part of the License granted herein, a non-exclusive right of ingress to and egress from the Property for the purposes specified in Section 3.2 below using only those access roads depicted on the attached Exhibit B. Such access roads shall be constructed by the Licensee at Licensee's sole expense, and Licensee shall be solely responsible for the maintenance and repair of any such access roads. District, in coordination with Licensee, may at any time close, relocate, reconstruct or modify such means of access, provided that a reasonably convenient and adequate alternative means of ingress and egress is available for the same purposes.

1.4. Subject to Section 3.6 below, District shall retain and reserve the right to enter upon and use the Property without notice for any purpose necessary, incidental to or in connection with its rights as the owner of the Property, or in the exercise of its governmental functions, or for inspecting, monitoring, or conducting other activities it deems necessary or desirable on the Property. District agrees to cooperate with Licensee's actions to control access to the Property as provided in Section 8.1 below, and shall not permit unsupervised access to the Property by third parties except by prior arrangement with Licensee. Licensee agrees to reasonably cooperate with the District in making such arrangements, and in providing personnel to conduct guided tours of the Solar Garden for District students or other community groups at times mutually agreed upon by the Parties following the Operations Date.

2. **Term; Subscription Agreement Condition Precedent.** Licensee's rights under the License begin on the Effective Date and continue initially until the date on which the Solar Garden begins delivering electrical energy in greater than test quantities (the "Operations Date" and such period, the "Development Period"). If the Operations Date does not occur on or before the date that is nine (9) months from the Effective Date, this Agreement and the License will terminate and be of no further force or effect. Upon the Operations Date, the term of the License and this Agreement shall be extended automatically for a period of twenty (20) years (the "Term"). Upon written amendment of this Agreement, mutually executed and delivered not fewer than one hundred eighty (180) days prior to the expiration of the Term or any Renewal Term (as defined hereafter), and provided that Licensee is not in default of this Agreement, the License and this Agreement may be extended for up to two consecutive five (5) year periods (each, a "Renewal Term"). Notwithstanding the foregoing, the mutual execution and delivery of a subscription agreement for the electrical energy generated by the Solar Garden is a condition precedent to the effectiveness of the License. If the Parties do not mutually execute such a subscription agreement within sixty (60) days after the Effective Date, then this Agreement and the License will terminate and be of no further force or effect as to either Party or the Property. The Parties may extend such sixty (60) day period upon mutual written agreement.



**3. Use and Condition of Property.**

**3.1. Condition of Property.** Licensee acknowledges that it has exercised due diligence in inspecting and evaluating the Property for use in connection with the Solar Garden, and agrees that License shall apply to the Property "as is" in its current condition, with all faults, hazards or title defects, known or unknown. District makes no warranty, express or implied, as to the suitability of the Property for Licensee's intended purposes. Licensee's use right pursuant to this Agreement shall be subject to all existing easements and rights of way in place or of record regarding the Property, and subject to all zoning and land use restrictions and regulations applicable to the Property, now or at any time during the Term.

**3.2. Permitted Operations.** Licensee's right to use the Property during the Term is specifically limited to solar energy conversion, the collection and transmission of electrical energy to and from the Solar Garden, and for related and incidental purposes and activities, including but not limited to: (a) locating, constructing, installing, operating, maintaining, improving, repairing, relocating, and removing the Solar Garden on and from the Property, except that Licensee may relocate or remove the Solar Garden only upon expiration or termination of this Agreement as provided in Section 10; (b) constructing and installing supporting structures, including but not limited to ground fasteners, such as piles and posts, and all necessary below- and above-ground foundations; (c) accessing the Property and the Solar Garden (including but not limited to access for lifting, rigging, and material-handling equipment); (d) installing gates, fences, and such other security measures as set out in the site development plan incorporated into that certain Conditional Use Permit issued by Mesa County to Licensee and dated June 25, 2013, to secure the Solar Garden; and (e) installing, maintaining, using, and repairing on the Property fiber optic cables, inverters, meters, electrical wires and cables required for the collection and transmission of electrical energy to and from the Solar Garden.

**3.3. Temporary Laydown Area.** During installation of the Solar Garden and any maintenance or repair activities related thereto, Licensee may use portions of the Property designated for storage of Solar Garden components, temporary vehicle parking, and temporary stockpiling of other materials or equipment necessary for the installation of the Solar Garden, taking all commercially reasonable steps to prevent erosion, control weeds, abate nuisances and maintain the Property in compliance with county and municipal ordinances and regulations. Upon completion of such installation, maintenance, or repairs, as applicable, Licensee will remove all such equipment, vehicles, and other materials and restore such portion of the Property to substantially the same condition as before the Effective Date.

**3.4. Impacts to Property.** Upon completion of installation of the Solar Garden, Licensee will replace any disturbed soil or vegetation, and restore the Property to as near the condition of the Property as of the Effective Date as commercially reasonable. Licensee shall immediately repair, replace, or reimburse District for any damage to the Property caused by Licensee's acts or omissions on the Property. The Parties agree that installation of the Solar Garden will require mounting and/or supporting such system on the ground of the Property, and such does not constitute damage to the Property within the meaning of this Section.

**3.5. Utility Services.** District agrees to provide Licensee reasonable assistance or approvals if needed for any reason in connection with Licensee's request for new utility services for water and electricity for purposes of installation, construction, maintenance and operation of the Solar Garden. The District makes no guarantee of availability or uninterrupted utility service. All costs for connection, metering and use of such utilities shall be at Licensee's expense.

**3.6. No Interference; Solar Insolation Covenant.** Except as required by law or court order and subject to District's rights as reserved herein, the District shall not perform actions on the Property or knowingly permit its employees, agents, contractors, or invitees to perform actions on the Property that impede or interfere with: (i) the installation, maintenance, operation or removal of the Solar Garden on the Property in accordance with this Agreement; (ii) access over the Property to the Solar Garden; (iii) the passage of direct solar radiation across the Property; or (iv) the transmission of electric, electromagnetic or other forms of energy to or from the Property in connection with the operation of the Solar Garden. District shall not erect or plant any trees, structures, or improvements on the Property after the Effective Date that impede or interfere with the passage of direct solar radiation to the Solar Garden, unless District has received prior written approval from Licensee for any such trees, structures, or improvements. Notwithstanding the foregoing, the parties agree that the District shall not be in violation of this Section 3.6 in connection with temporary or transitory interference with access or direct sunlight due to occasional use of machinery or equipment on the Property, temporary parking of vehicles or due to periodic inspections, tours or viewing of the Property or Solar Garden.

**4. Consideration.** In consideration of the License granted herein, Licensee will pay District an annual payment (the "License Fee") as specified in this Section 4 below, which License Fee will be due and payable on the Effective Date and on each anniversary of the Effective Date thereafter until this Agreement and the License terminates or expires by its terms. License Fees for partial years shall be prorated based on a 365-day year. The License Fee due on the Effective Date shall be One Thousand Two Hundred Dollars (\$1,200) per acre of the Property per year, and such License Fee shall increase annually at the rate of one and one-half percent (1.5%), as shown for Year 1 through 20 in Exhibit C, attached. The Parties agree that for the purposes of this Section 4, the Property consists of 10.56 acres.

**5. Insurance.** Licensee shall, at its sole expense, maintain in full force and effect at all times during the Term or any Renewal Term of the Agreement insurance coverage with limits not less than those set forth below. Licensee shall deliver to the District certificates of insurance evidencing compliance with this Section 5 prior to any use of or entry upon the Property pursuant to this Agreement. The requirements contained herein as to types and limits, as well as the District's approval of insurance coverage to be maintained by Licensee are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Licensee under the Agreement.

- a. Workers' Compensation coverage in accordance with scope and limits as required by the State of Colorado.
- b. Employer's Liability: A minimum of \$500,000 per occurrence.

- c. Commercial General Liability (including public liability), "occurrence form," with minimum limits of FOUR MILLION (\$4,000,000) combined single limit, per occurrence for bodily injury, personal injury and property damage. Such policy shall be endorsed to include Mesa County Valley School District No. 51, its elected officials, employees, agents and volunteers as additional insureds with respect to liability arising out of Licensee's use of or activities upon the Property pursuant to the License and this Agreement.
- d. Comprehensive Automobile Liability insurance including "B" extension (uninsured motorists), with minimum limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per accident.

5.1. Licensee shall require all agents, contractors and subcontractors to maintain during the term of this agreement, Commercial General Liability insurance, Comprehensive Automobile Liability insurance, and Workers' Compensation and Employers' Liability insurance, in the same manner as specified for Licensee. Licensee shall furnish contractors' and subcontractors' certificates of insurance to the District immediately upon request.

5.2. All insurance policies required hereunder shall be in a form acceptable to the District, and provide for written notice to the District thirty (30) days before the effective date of any cancellation, non-renewal or material alteration or reduction of coverage provided therein.

5.3. Nothing herein shall be deemed or construed as a waiver of any of the protections to which the District or its officers, directors and employees may be entitled pursuant to the Colorado Government Immunity Act, sections 24-10-101, C.R.S., as amended.

5.4. Should Licensee's required insurance coverages be altered during the term hereof, substitute coverage must be acquired from insurers authorized to conduct business in the State of Colorado (and acceptable to the District). The insurers must also have policyholders' rating of "A-" or better, and financial class size of "Class VII" or better in the latest edition of Best's Insurance Reports, unless the District grants specific approval for an exception.

5.5. Licensee shall procure and continuously maintain the minimum insurance coverage listed below, and additional coverage as may apply, with forms and insurers acceptable to the District. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

5.6. The policies required by paragraphs (b) and (c) above shall be endorsed to specify: "Mesa County Valley School District No. 51, its officers, officials, employees and volunteers as INSUREDS, as respects liability, on behalf of Licensee, arising out of this Agreement." All certificates of insurance are to be submitted on standard "ACCORD 25-S" form.

5.7. In accordance with the submittal requirements outlined above, LICENSEE shall deliver the original copy of the certificate(s) of insurance required by this clause and all subsequent notices of cancellation, termination and alteration of such policies to the attention of Lisa Sharp at the following address: Mesa County Valley School District No. 51, Purchasing and Warehouse Services, 330 24<sup>th</sup> Court, Grand Junction, CO 81501.

5.8. If the Solar Garden, or any portion thereof, is destroyed or damaged by fire or otherwise to an extent which renders it unusable, Licensee may rebuild or repair the portions of the Solar Garden destroyed or damaged. If Licensee elects to rebuild or repair, it shall do so at its sole cost and expense and in accordance with all applicable permits and site development plans concerning the Property and the Solar Garden. District and Licensee shall cooperate with each other in the collection of any insurance proceeds that may be payable in the event of any loss or damage. If Licensee elects not to proceed with the rebuilding or repair of the Solar Garden, it shall give notice of its intent within sixty (60) days after the destruction or damage. Upon receipt of such notice, District may then, at its option, terminate this Agreement.

5.9. District and Licensee each waive any and every claim for recovery from the other for any and all loss of or damage to the Property or to the contents thereof, including the Solar Garden, which loss or damage is covered by valid and collectible fire and extended insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Since this mutual waiver will preclude the assignment of any such claim by subrogation or otherwise to an insurance company or any other person, Licensee agrees to give to each insurance company which has issued, or may issue, to the Licensee policies of fire and extended coverage insurance, written notice of the terms of this mutual waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of this waiver.

6. **Environmental Compliance.** Licensee covenants and agrees that it will not use, store or on-site dispose, nor will it permit the use, storage or on-site disposal of any Hazardous Material or explosives under or about the Property, nor will it transport or permit the transportation of Hazardous Material or explosives to the Property. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Colorado or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under appropriate state law provisions; (ii) gasoline or petroleum products; (iii) asbestos or an asbestos-containing material; (iv) mill tailings; (v) designated as a "hazardous substance" pursuant to the Federal Water Pollution Control Act (33 U.S.C. §1321), or any amendments thereto; (vi) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act (42 U.S.C. §6903) or any amendments thereto; (vii) defined as a "hazardous substance" "hazardous waste" or "toxic substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601) or the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq., (1990)), or amendments thereto; (viii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. §6991) or amendments thereto; or (ix) regulated or covered under any of the federal or state rules or regulations promulgated pursuant to any of the above-referenced laws.

6.1. Licensee and its employees, agents, contractors and subcontractors shall design, construct, operate and maintain the Solar Garden in a manner that complies with all Hazardous Material laws and related regulations and other applicable federal, state and local environmental requirements, including the requirements of any applicable wastewater or drainage management plans or regulations, and shall acquire and comply with all necessary federal, state and local environmental and wastewater/drainage permits and permitting requirements.

6.2. Each Party shall immediately notify the other Party, in writing, of (i) any and all claims or demands asserted against it arising from or related to the release, discharge, disposal or presence of Hazardous Materials on, from or about the Property, (ii) any planned action by either Party to remove, abate, use, disturb, handle or remediate any Hazardous Materials on, under or about the Property, (iii) either Party's discovery of any contamination, release, disposal, or other occurrence or condition on the Property that could cause the Property, or any part thereof, to become subject to any restrictions on the ownership, occupancy, transferability, or the use of the Property under any Hazardous Material laws or that could subject either Party to liability for damages, losses, cleanup costs, or other expenses under such laws..

6.3. All of the representations, warranties, covenants and indemnities herein shall survive the termination or expiration of this lease and shall survive the transfer, if any, of any or all right, title and interest in and to the License or this Agreement by Licensee to any party, whether or not affiliated with Licensee.

## 7. Indemnification.

7.1. Indemnity by District. To the extent permitted by law, District will defend, indemnify and hold harmless Licensee and Licensee's officers, employees and agents for, from and against liability for physical damage to property and for personal injuries or death caused by the negligence or willful misconduct of District or District's agents or employees, contractors, and invitees, arising out of or in any way related to the District's use of the Property.. However, District shall not be liable to Licensee or Licensee's employees, agents, contractors or subcontractors or any other person whomsoever, for any loss of property resulting from vandalism, theft or burglary on or from the Property, or for any injury to person or damage to property on or about the Property caused by the negligence or willful misconduct of Licensee, Licensee's agents, servants contractors, subcontractors or employees, or of any other person entering upon the Property at the invitation of Licensee, or caused by any property or equipment of Licensee located or installed on the Property becoming out of repair, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Property, and Licensee agrees to make no claim for any such loss or damage at any time, except for claims to insurance proceeds Licensee is entitled to receive.

7.2. Indemnity by Licensee. Licensee shall defend, indemnify, and hold harmless District and District's elected officials, employees and agents for, from, and against any and all claims, damages, liability, including costs, expenses and attorney fees, incurred as a result of any negligence or willful misconduct of the Licensee or Licensee's agents, assigns, employees or contractors arising out of or in any way related to the License or Licensee's use of the Property thereunder, or the breach of any covenant or warranty provided to District under this Agreement or the termination of this Agreement or revocation of the License (other than termination for a

District Default under Section 10.2) except to the extent such claims, damages or liability are caused by the negligent acts or omissions or willful misconduct of District or District's employees or agents. The foregoing indemnity obligation shall expressly cover, but is not limited to, any claims, fines, penalties, damages, costs or losses (including, without limitation, reasonable attorneys' fees and expenses for investigation and experts), which arise out of or are in any way related to Licensee's use, generation, handling, transportation, disposal, storage, discharge or release of any Hazardous Material on, from or about the Property. Licensee further agrees that all agreements entered into, regardless of how titled, with any subscriber to the Solar Garden or Person who is effectively a subscriber, other than the District or an agency, State institution of higher education or governmental subdivisions of the state of Colorado, shall provide that such subscriber shall also indemnify the District and District's elected officials, employees and agents against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any negligent act or omission by such subscriber, its employees, agents, and assigns arising out of or in any way connected with this License or such subscriber's subscription.

**8. Representations, Warranties, and Covenants of Licensee.**

**8.1. Security.** Licensee will provide and maintain, throughout the Development Period, Term, and any Renewal Term, all security measures reasonably necessary for the construction and operation of the Solar Garden, including, but not limited to, warning signs, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the Solar Garden, or injury or damage to any person or property arising out of Licensee's use of the Property. Licensee agrees to install and maintain closed and locked gates around the perimeter of the Property, and will provide District with an access code or key to such gates. Licensee acknowledges and agrees that District will not provide active security for the Property, but may, but will not be obligated to, enter upon, inspect and access the Property at any time, with or without notice. Each Party agrees to notify the other Party in the event any hazardous or suspicious activities or conditions or unauthorized persons are discovered on the Property. Licensee will implement and will be solely responsible for remotely monitoring the Solar Garden. The District shall not be liable for loss of or damage to any personal property or improvements of Licensee, its contractors, subcontractors employees or agents located on the Property during the Development Period or the Term, including but not limited to the Solar Garden and its associated components and equipment, unless caused by the negligence or willful misconduct of the District or its employees, agents, invitees, or permittees other than Licensee or agents.

**8.2.** Licensee shall, upon request, provide to District a written list of all Licensee's contractors, subcontractors or other authorized agents who may be on the Property to construct, install, or perform any operation or maintenance on the Solar Garden. All persons seeking entry to the Property for work on the Solar Garden or any related component on behalf of Licensee may be required to show identification or comply with other reasonable security procedures as the District may establish from time to time, and may be denied access to the Property in the event of noncompliance with such procedures. The District shall confer with Licensee before implementing any security procedures regarding the Property.

8.3. District may request the removal from the Property of employees or agents of Licensee identified by District, in its reasonable judgment, as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment under this Agreement or whose presence on the Property is deemed by the District to be contrary to the best interests of the District or to create unreasonable danger to persons or property, including failure to comply with reasonable security requirements of District or otherwise failing to comply with federal and state of Colorado law, statute, rule, and regulation.

8.4. **Care and Appearance.** Licensee shall construct and at all times maintain the Solar Garden in accordance with the highest industry standards and in accordance with the Site Development Plan. Licensee shall at all times, take appropriate measures to control weeds, and keep the Property and all landscaping or other improvements required by the Site Development Plan, whether on or off the Property, free of trash or debris caused by Licensee, its agents, employees, contractors and invitees. Licensee shall comply with applicable state, county, or municipal permits, ordinances or regulations concerning upkeep of the Property and operations of the Solar Garden.

8.5. **Utility Requirements; Qualifications.** Licensee represents and warrants that it is familiar with all of the requirements of any utility providing interconnection or transmission services to the Solar Garden. Licensee agrees that it shall abide by the terms and conditions set forth in such utility's requirements, rules and regulations; perform and be solely responsible for any and all obligations to such utility; and indemnify, defend and hold harmless, to the extent permitted by law, District from any loss, damage or expense, including attorney's fees, incurred as a result of Licensee's failure to do the same. Licensee further represents and warrants that it has or will obtain by the Effective Date all necessary licenses, certifications, approvals, insurance, permits, and other authorizations (collectively, "Permits") required to develop the Solar Garden. Licensee warrants that it shall maintain all such Permits without additional consideration from or reimbursement by District or any cost or expense to District. All employees, contractors or subcontractors or agents of Licensee performing any activities on the Property shall hold the required licenses or certifications, if any, to perform their responsibilities. Licensee further represents and warrants that it currently has obtained and shall maintain any applicable certificate of authority to do business in the state of Colorado, including registration with the Colorado Secretary of State, and will have at all times a designated registered agent in Colorado to accept service of process. Any denial, revocation, withdrawal, cancellation or non-renewal of a Permit shall be deemed to be a default by Licensee under this Agreement.

8.6. **Compliance with Laws.** Licensee, at its expense, shall comply with all laws, ordinances, statutes, administrative orders and regulations applicable to the Solar Garden and the Property.

8.7. **Operations Management.** At all times during the Development Period and the Term, Licensee shall designate and maintain one or more qualified, experienced contractors to manage the construction, installation, operation and maintenance of the Solar Garden (the "Operations Contractor"). Such Operations Contractor will be fully authorized to represent and act for Licensee regarding all matters arising regarding Licensee's construction, installation, operations and maintenance of the Solar Garden under this Agreement. Licensee shall make an authorized representative of the Operations Contractor available on site within twenty-four (24)

hours for any Emergency (as defined in Section 11) or other events outside of normal system performance monitoring issues or scheduled maintenance activities unless there are exigent circumstances such as weather, fire or other emergency event preventing the Operations Contractor from reaching the Property.

**9. Conveyance and Substitution of Property; Assignment by Licensee; Rights of Lenders.**

**9.1. Conveyance of Property.**

9.1.1. District acknowledges and agrees that Licensee is the exclusive owner and operator of the Solar Garden, that no portion or component of the Solar Garden is a fixture, and that the Solar Garden may not be sold, leased, assigned, mortgaged, pledged, or otherwise alienated or encumbered by District in connection with the conveyance of any fee interest in or to any portion of the Property, except as provided in this Agreement.

9.1.2. District shall give Licensee at least thirty (30) days' advance written notice of any sale, exchange, trade, or transfer of all or any portion of the Property to a party other than Licensee or its successors or assigns or Lenders (each instance, a "Transfer"). Any such notice shall identify the transferee, the portion of the Property to be transferred, and the proposed date of the Transfer. The District shall require any party to whom the Property is transferred to assume the District's rights and obligations under this Agreement upon closing of the Transfer, as such rights and obligations relate to the Property transferred, unless (a) the Transferee is Licensee or its successors or assigns; (b) the Transferee enters into a separate site license agreement with Licensee or its successors or assigns regarding Licensee's use of the transferred portion of Property subsequent to the Transfer; or (c) the Transfer does not convey rights to use any portion of the Property in a manner that interferes with Licensee's permitted uses hereunder.

**9.2. Assignment by Licensee.** The Parties agree and acknowledge that Licensee may finance the acquisition, development, installation, operation or maintenance of the Solar Garden with financing or other accommodations (the "Financing Transaction") from one or more investors, banks or financial institutions (each a "Lender"), and that Licensee may secure its obligations to one or more Lenders may be secured by, among other collateral, a pledge or collateral assignment of this Agreement without (collectively, the "Lender's First Security Interest").

9.2.1. In the event that Lender chooses to exercise the rights and remedies of Licensee under this Agreement, Lender shall pay all sums due from Licensee under this Agreement and perform any other act, duty or obligation required of Licensee (including without limitation the obligation to provide District with a subscription as required hereunder) or cause to be cured any default of Licensee hereunder in the time and manner provided by the terms of this Agreement, provided, however, that nothing herein shall require Lender to cure any default of Licensee under this Agreement (unless Lender has succeeded to Licensee's interests under this Agreement or otherwise elected to exercise the rights and remedies of Licensee) or to perform any act, duty or obligation of Licensee under this Agreement.



9.2.2. Prior to the exercise of remedies under any agreements or instruments creating Lender's First Security Interest in the Solar Garden, including any sale of the Solar Garden by Lender, whether by judicial proceeding or under any power of sale contained therein, or by any conveyance from Licensee to Lender, Lender shall give thirty (30) days' written notice to District.

9.2.3. In the event a Lender elects to exercise the rights and remedies of Licensee or its remedies under any agreement or instruments creating the Lender's First Security Interest in the Solar Garden, it shall do so using a Qualified Assignee, except where the obligations of Licensee are financial in nature and of the type typically undertaken by financial institutions. "Qualified Assignee" shall mean a proposed or actual assignee or transferee of Licensee's rights and obligations under this Agreement pursuant to a transfer by any means including by judicial proceeding or power of sale under any agreements or instruments creating a Lender's First Security Interest, in connection with which Licensee, or its successor, has provided to the District reasonable proof that such proposed or actual assignee or transferee: (a) has comparable ability, personnel and successful experience to that of Licensee in operating and maintaining PV Systems comparable to the Solar Garden; (b) has the financial and logistical capability to maintain, repair, operate and remove (or finance, design, construct, operate and maintain if prior to the Operations Date), the Solar Garden in accordance with the requirements of this Agreement; (c) has provided the District with a performance bond in an amount equal to or greater than may be required by Section 14.3 herein; and (d) shall assume in writing all of Licensee's obligations under this Agreement and under any other then current subscription agreements applicable to the Solar Garden, including any accrued obligations at the time of the assignment or transfer.

9.2.4. Other than permitted assignments to Lender(s) described above, Licensee shall not expand its activities, assign its rights under this Agreement, or allow any third party to use the License without the prior written consent of the District. Such consent shall not be unreasonably withheld if the proposed assignment is to a Qualified Assignee, as defined above, who has acquired all or substantially all of the business assets or capital stock of Licensee, directly or indirectly, by purchase, merger, consolidation or other acquisition transaction.

**10. Default and Termination; Remedies; Rights Upon Termination; No Cross Default.** In accordance with Section 2, this Agreement and the License will terminate and be of no further force or effect if the Parties fail, within sixty (60) days after the Effective Date, to execute and deliver to each other a subscription agreement for electrical energy produced by the Solar Garden. The termination of this Agreement and the License under any other event is governed by this Section 10.

**10.1. Licensee Default; District's Right to Terminate.** District shall have the right to terminate this Agreement in the event any one or more of the following events of default by Licensee: (i) Licensee's abandonment, shut-down of the Solar Garden during the Term or any Renewal Term for a period exceeding thirty (30) days except for a shut-down caused by the District or required by the utility; (ii) any representation or warranty furnished by Licensee in this Agreement is false or misleading in any material respect when made; (3) any failure by Licensee to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein unless such failure is corrected or cured within forty-five

(45) days after written notice to Licensee demanding that such failure to perform be cured; (iv) any lien or encumbrance is placed on or asserted against the Property by contractor, subcontractor, supplier, laborer or materialman of Licensee that is not released within thirty (30) days after notice of said filing; (v) the filing of a bankruptcy petition whether by Licensee or its creditors against Licensee which proceeding shall not have been dismissed within ninety (90) days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of Licensee; (vi) failure by the Licensee to pay any amount owed to the District under the terms of this Agreement within thirty (30) days after the date such payment is due; (vii) a change occurs in state, federal or local law or ordinance, or an order or decision is issued by a state or federal court, official or administrative agency of competent jurisdiction, that either invalidates or nullifies the License or renders unlawful one or more of the uses permitted by the License that is necessary for the development or operation of the Solar Garden; or (viii) the subscription agreement between District and Licensee is terminated due to a default by Licensee in performing Licensee's obligations under such agreement.

**10.2. Licensee's Right to Terminate.** Licensee shall have the right to terminate this Agreement (a) at any time before the Operations Date upon thirty (30) days' prior written notice to District; or (b) after the Operations Date, if a material default in the performance of District's obligations under this Agreement (a "District Default") has occurred and remains uncured after thirty (30) days' notice from Licensee of such District Default. Any termination by Licensee after the applicable notice and cure period set forth above shall be effective upon thirty (30) days' written notice to District.

**10.3. Effect of Termination.**

**10.3.1.** Upon the expiration or earlier termination of this Agreement, the License shall be automatically be deemed revoked without further notice, and Licensee shall remove the Solar Garden from the Property and restore the Property to substantially the same condition as of the Effective Date. The cost of such removal and restoration shall be borne by (a) Licensee, if this Agreement expires by its terms, or terminates for any reason other than a District Default; or (b) by the District, following any termination by Licensee for a District Default under Section 10.2(b) above.

**10.3.2.** If the costs to remove the Solar Garden (including costs required to restore the Property to its original condition) pursuant to subsection 10.3.1 above would exceed the value of the Solar Garden, then Licensee may, with District's written consent (which may in its sole discretion be withheld or denied), surrender the Solar Garden to District for no consideration. In the event of such surrender, Licensee shall promptly execute and deliver to District all documents necessary to (i) cause all rights, title and interests in and to the Solar Garden to pass to District, free and clear of any liens or encumbrances, and (ii) assign all warranties for and agreements related to the Solar Garden to District, to the extent assignable. Unless the Solar Garden shall have been surrendered with District written consent pursuant to this subsection, Licensee shall complete the removal and restoration required by subsection 10.3.1 by a mutually agreeable date, but in no event later than one hundred twenty (120) days after the expiration or termination of this Agreement.

**10.3.3.** If Licensee is under an obligation to remove the Solar Garden pursuant to this Section 10, or otherwise, and fails to remove or commence substantial efforts to remove the Solar Garden by the date required by subsection 10.3.2 above, District may remove the Solar Garden to a public warehouse and restore the Property to its original condition, ordinary wear and tear excepted, at Licensee's expense. Upon failure of Licensee to remove the Solar Garden pursuant to this Section 10 when required to do so, including after notice of default as required by the cure provisions applicable to a Licensee default, and failure to cure such default, Licensee agrees that: (i) title to the Solar Garden and all rights to all personal property of Licensee installed or located on the Property or otherwise related to this Agreement shall be transferred to District, along with all rights to any SO-RECS to which Licensee has rights under its agreements with any utility regarding the Solar Garden, including but not limited to all Environmental Attributes, where "Environmental Attributes" shall refer to any and all non-energy attributes, current or future credits, benefits, emissions reductions, offsets, and allowances, or marketable environmental attributes, certificates or reporting rights, howsoever entitled, in each case attributed or allocable to the energy produced at the Garden, including, but not limited to, carbon trading credits or offsets, emissions reduction credits, emissions allowances, green tags, and tradable renewable credits; (ii) Licensee shall cooperate with District in executing all necessary title and assignment or transfer documents, and should it fail or refuse to do so, District may execute such documents in its name; (iii) Licensee hereby irrevocably and unconditionally appoints District as attorney in fact to execute whatever documents and take whatever action District in its sole discretion may desire to take to perfect, assemble, recover, transfer, encumber, assign, sell, foreclose, or dispose of all or any portion of the Solar Garden and other personal property of the Licensee located or installed on the Property, as well as any applicable Utility agreements, or alternatively, to take possession and operate the Solar Garden; and (iv) without limiting the generality of the foregoing, Licensee authorizes District to endorse or otherwise cause all other interests related to the Solar Garden to be transferred into the name of District or any other person or entity designated by District. This power of attorney shall be broadly construed in favor of District and shall result in the maximum ability of District to exercise the rights described herein. Such authority shall extend to authorize District to control, sell, assign, pledge, or otherwise handle the property and assets of Licensee that are affected by this Agreement, all without liability to District. If for any reason the District is unable to complete or effectuate the transfers contemplated by this Section 10.3.3, then at such time as Licensee is given notice of default, Licensee agrees that the terms, conditions, promises and agreements of this Section 10.3.3 shall be deemed a security agreement under the UCC with respect to the debt created by Licensee's failure to remove the Solar Garden and restore the Property and pay the cost thereof as required by this Section 10. All rights to all personal property of Licensee located or installed on the Property or otherwise related to the Solar Garden or this Agreement shall be identified as collateral for such debt as described in this Section 10.3.3, and District shall be entitled to all rights and remedies available to it under the UCC with respect to such collateral, or any other applicable law. Any notice of sale, disposition or other intended action by District, sent to Licensee at Licensee's address specified herein and sent to the Lender at its address specified herein, at least fifteen (15) days prior to such action, shall constitute reasonable notice to Licensee, provided that any action by District to recover the possession of the Solar Garden and other personal property of the Licensee abandoned on the Property may, in accordance with the provisions of Rule 104 of the Colorado Rules of Civil Procedure, be initiated under an order of possession issued prior to a hearing. In the event of its abandonment of the Solar Garden,

Licensee acknowledges its voluntary and intelligent waiver of its rights to any hearing prior to losing possession of the Solar Garden, the SO-RECs, the Environmental Attributes or any other property affected by this Agreement. Expenses of retaking, holding, preparing for sale, selling or the like to which District shall be entitled shall include District's reasonable attorney's fees and legal expenses. Licensee hereby releases and forever discharges District from any and all claims that may arise out of District's exercise of the rights described in this Section 10.3. Further, Licensee agrees not to hold District or its officers, employees, representatives or agents liable in any way for the exercise of such rights and powers. By the exercise of the rights granted by this Section 10.3.3, District waives no other rights to seek any deficiency, or to take any other action available at law or under this Agreement.

**10.4. Cumulative Remedies.** Subject to the other terms and conditions of this Agreement, each Party shall have all rights and remedies available at law and in equity for any breach of this Agreement by the other party.

**10.5. No Cross Default; Separate Agreements.** No event of default by District, as an energy subscriber pursuant to any power purchase and subscription agreement with Licensee will constitute a District Default under this Agreement. Any amendment, modification, expiration, or termination of any power purchase and subscription agreement shall be of no force or effect as to this Agreement, and this Agreement shall remain valid, and in full force and effect unless and until expressly terminated by the Parties.

**11. Emergencies.** Upon any Party's knowledge of an Emergency (as defined below) or potential Emergency, such Party immediately shall provide telephonic notice to the other Party of the nature of such Emergency at the Emergency Contacts specified below. Without limiting the foregoing, Licensee shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss to the Solar Garden and any interruption, reduction or disruption of its proper operation, and shall, as soon as practicable, report to District telephonically any such incident, including Licensee's response thereto. The term "Emergency" means an event occurring on the Property that (a) poses actual or imminent risk of (i) material physical damage to the Solar Garden; (ii) damage to the Property or any neighboring real property; (iii) serious personal injury, if related to the Solar Garden; and (b) requires, in the good faith determination of District or Licensee, immediate preventative or remedial action.

**EMERGENCY CONTACTS:**

**For Licensee:**

Erik Stuebe  
Ecoplexus, Inc.  
650 Townsend Street, Suite 350  
San Francisco, CA 94103  
Telephone: 415-235-6907

**For District:**

Tim Leon, Director of Safety and  
Security  
Mesa County Valley School District  
No. 51  
2114 Grand Ave.  
Grand Junction, CO 81501  
Telephone: 970-254-5103

12. **Notices.** Any and all notices under this Agreement, except emergency notices as set forth in Section 11 above, shall be in writing, sent certified, first class U.S. Mail and shall be addressed as follows. Receipt shall be evidenced by proof of certified mail receipt. Notices shall be to the points of contact identified below. Changes in the point of contact, and related information, by either Party, may be done at any time at either Party's sole election by the means of notice described herein.

If to Licensee:

Ecoplexus, Inc.  
650 Townsend Street, Suite 350  
San Francisco, CA 94103  
Tel. 650-425-7851  
Attn: John Gorman

If to District:

Mesa County Valley School District  
No. 51  
2115 Grand Ave.  
Grand Junction, CO 81501  
Tel. 970-254-5100  
Attn: Phil Onofrio

13. **Special Provisions.**

14. **Jurisdiction.** This Agreement shall be governed by the laws of the state of Colorado and any action at law concerning the provisions hereof shall be brought only in Mesa County, State of Colorado.

14.1. **No Consequential Damages.** In no event shall either party be liable to the other for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of this Agreement or the default of either party.

14.2. **Immunities.** Licensee understands and agrees that District, its officers, officials and employees, are relying on and do not waive, or intend to waive, by any provision of this Agreement the monetary limitations or any other rights, immunities and protections provided by Colorado's Governmental Immunity Act, § 24-10-101 to 120, C.R.S., or otherwise available to District, its officers, officials and employees.

14.3. **Performance Bond.** Licensee shall provide District, with thirty (30) days after the tenth (10th) anniversary of the Effective Date, and maintain in full force and effect for District's benefit throughout the remainder of the Term and any Renewal Term, a good and sufficient performance bond for the removal of the system and remediation of the Property, executed by a corporate bonding company licensed to transact business in the State of Colorado and acceptable to District, in the amount of One Hundred Thousand Dollars (\$100,000) for year eleven (11) and increasing year to year to an amount of Two Hundred Thousand Dollars (\$200,000), which amounts are agreed by the Parties to be a reasonable estimate of the estimated costs of removing the Solar Garden and restoring the Property in accordance with Section 10.3 above, including remediation and disposal of Hazardous Materials introduced, installed or released on the Property by Licensee, its agents or contractors. The expense of this bond shall be borne by Licensee. If at any time a surety on such a bond becomes irresponsible or loses its right to do business in the State of Colorado, Licensor shall require the substitution of another surety acceptable to Licensor, which Licensee shall furnish within ten days after receipt of written notice to do so. From and after the Operations Date, the amount of the performance bond may be

reviewed at either party's request every five (5) years. If the parties agree in writing that the estimated costs of said removal, remediation, restoration and disposal have increased or declined since the Effective Date or the last review date, whichever is later, then the amount of the performance bond will be increased or decreased consistent with such revised estimate. The revised estimate will be obtained from a reputable, independent contractor selected jointly by District and Licensee.

**14.4. Taxes.** Licensee agrees to promptly pay all personal property taxes, excises, license fees and permit fees of whatever nature applicable to its property or the operations on the Property and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the Property and further agrees not to permit any of said taxes, excises, license fees or permit fees to become delinquent. Licensee shall further reimburse the District for any ad valorem property taxes assessed against the Property on account of the License or this Agreement. Licensee also agrees not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Property or improvements thereto, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman. Licensee agrees to furnish to the District, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by it of Social Security, unemployment insurance and worker's compensation insurance, and all required licenses and all taxes. Licensee further agrees to promptly pay when due all undisputed bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against the Property or improvements thereon which will in any way impair the rights of District under this Agreement. However, in the event that any taxes are assessed against the generation, sale, delivery or consumption of the Solar Garden's energy output, District shall pay for all such amounts due as the law may require.

**14.5. Gravel Removal.** Upon the Effective Date, Licensee shall remove and relocate the District's gravel stored on the Property to a location specified by the District on the District's property adjacent to the northerly boundary of the Property. Such removal and relocation shall be at Licensor's expense.

**14.6. Availability of Funds; Appropriation.** Notwithstanding any other term or condition of this Agreement, it is understood and agreed that all or any payment obligation of the District under this Agreement, whether such obligation is direct or contingent, shall only extend to payment of monies duly and lawfully appropriated by the District for the purpose of this Agreement, and therefore is contingent upon the appropriation, allocation, and availability of funds for such purpose. The Parties further agree that any obligation on the part of District to pay Licensee in any given fiscal year constitutes a then-current fiscal year expense of District, payable exclusively from District's then-current annual appropriation. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the District within the meaning of any constitutional or statutory debt limitation, and Licensee acknowledges and agrees that (i) the District does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the District. No provision of the Agreement or this Agreement shall be construed to pledge or to create a moral obligation, equitable or other lien on any class or source of moneys

of the District. Neither District, nor Licensee on its behalf, has pledged the full faith and credit of the District, and this Agreement shall not directly or contingently obligate the District or its governing board, officers or employees to apply funds, or levy or pledge any form of taxation, to the payment of any amounts payable by District beyond those appropriated and allocated in the then-current fiscal year.

**15. Miscellaneous.**

**15.1. Survival of Certain Covenants.** Notwithstanding anything herein to the contrary, all terms and conditions of this Agreement, and any exhibits and attachments hereto, which may require continued performance or compliance beyond the suspension or revocation of this Agreement, shall survive such suspension or revocation and shall be enforceable by each Party as provided herein in the event of any failure by a Party to perform or comply with this Agreement. Without limitation, such continuing obligations shall include requirements to remove and restore the Property upon termination or expiration of the License, and to maintain required insurance until such has occurred.

**15.2. Entire Agreement.** This Agreement sets forth the entire agreement of the Parties with respect to the License and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Agreement, all of which are merged herein.

**15.3. Amendment.** Any amendment or modification of this Agreement must be in a written document signed by both District and Licensee.

**15.4. No Partnership.** Nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the Parties.

**15.5. Partial Invalidity.** Should any provision of this Agreement be held in a final and unappealable decision by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect and unimpaired by the court's holding.

**15.6. No Waiver.** The waiver of any covenant, condition or agreement contained herein shall not constitute a waiver of any other covenant, condition or agreement herein or of the future performance thereof.

**15.7. Singular/Plural.** When necessary for proper construction hereof, the singular of any word used herein shall include the plural, the plural shall include the singular.

**15.8. Force Majeure.** If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure" (defined below), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected Party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. "Force Majeure" means fire, earthquake, flood or other casualty or accident; strikes or labor disputes; war, civil strife or other violence, any law, order, proclamation,

regulation, ordinance, action, demand or requirement of any government agency or utility, or any other act or condition beyond the reasonable control of a Party hereto.

**15.9. Counterparts.** This License may be executed in two (2) counterparts, each of which shall be deemed an original, and both of which together shall be deemed to constitute one and the same instrument.

**15.10. Exhibits.** The following exhibits are, by this reference, incorporated and made part of this Agreement.

Exhibit A	Legal Description of Property
Exhibit B	Depiction of Property
Exhibit C	Memorandum of License Agreement

**16. Authority to Sign License.** By signing this Agreement, the undersigned do hereby assert, claim, and aver they have both the authority and are authorized to execute this Agreement on behalf of their respective Party.


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IN WITNESS WHEREOF, District and Licensee have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.


**DISTRICT:**

MESA COUNTY VALLEY SCHOOL  
DISTRICT NO. 51,  
a Colorado school district

By:   
Printed Name: Steven D. Schultz  
Title: Superintendent

**LICENSEE:**

ECOPLEXUS, INC.,  
a Delaware corporation

By:   
Printed Name: Erik Stene  
Title: President

**EXHIBIT A  
TO LICENSE AGREEMENT**

**LEGAL DESCRIPTION OF PROPERTY**

All that certain real property located in Mesa County, Colorado, more particular described as follows:

Lot 1, Girardi Subdivision; APN 2943-173-34-941, commonly known as 2930 D 1/4 Road, Grand Junction, Mesa County, Colorado 81501

EXHIBIT B  
TO LICENSE AGREEMENT

GENERAL DEPICTION OF THE PROPERTY AND SOLAR GARDEN

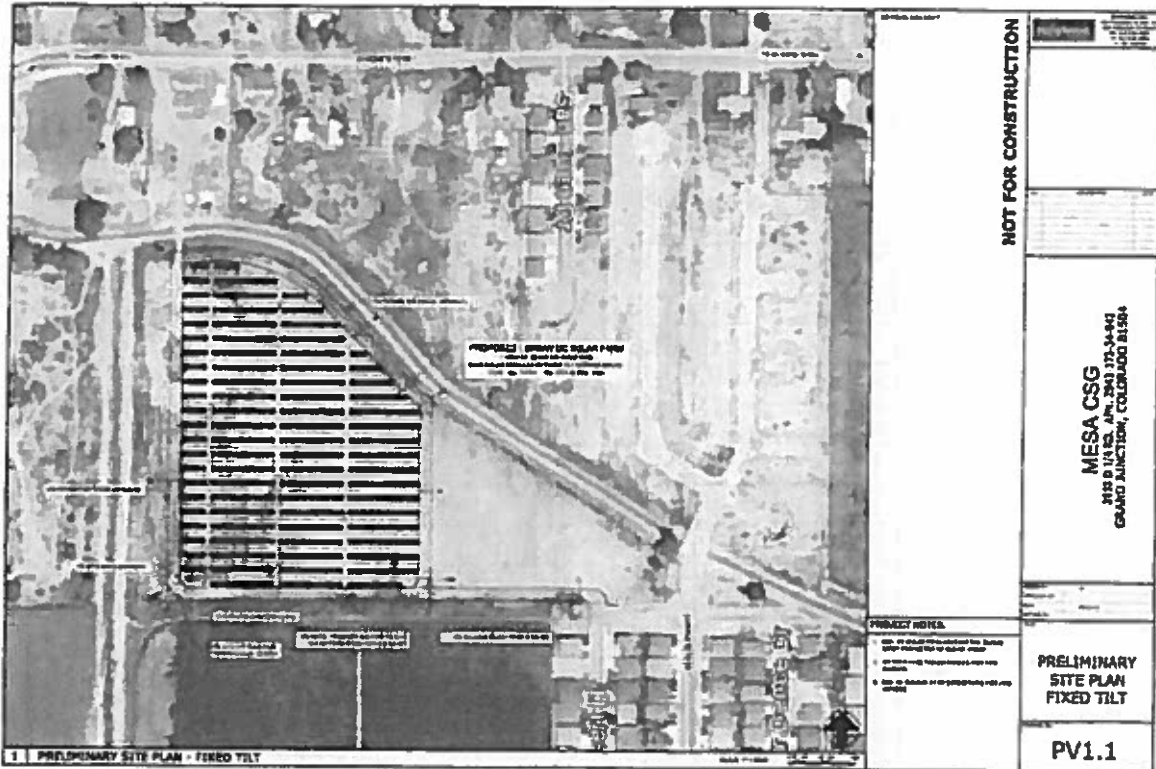


EXHIBIT C—Table of License Fees Payable Year 1 Through Year 20

TABLE 4.1: License Fees		
Year	License Fee per acre per year	Total
1	\$1,200.00	\$12,672.00
2	\$1,218.00	\$12,862.08
3	\$1,236.27	\$13,055.01
4	\$1,254.81	\$13,250.79
5	\$1,273.64	\$13,449.64
6	\$1,292.74	\$13,651.33
7	\$1,312.13	\$13,856.09
8	\$1,331.81	\$14,063.91
9	\$1,351.79	\$14,274.90
10	\$1,372.07	\$14,489.06
11	\$1,392.65	\$14,706.38
12	\$1,413.54	\$14,926.98
13	\$1,434.74	\$15,150.85
14	\$1,456.26	\$15,378.10
15	\$1,478.11	\$15,608.84
16	\$1,500.28	\$15,842.96
17	\$1,522.78	\$16,080.56
18	\$1,545.62	\$16,321.75
19	\$1,568.81	\$16,566.63
20	\$1,592.34	\$16,815.11

**EXHIBIT G**  
**LIST OF XCEL AGREEMENTS WITH SO**

1. Interconnection Agreement
2. Solar\*Rewards Community Agreement
3. SRC Subscriber Agency Agreement (Exhibit C)

**RECORD OF DECISION / FINDINGS OF FACT**

DATE: July 29, 2013  
FILE: CUP-2013-202  
LOCATION: 2930 & 2940 D ¼ Road  
PETITIONER: Ecoplexus  
650 Townsend Street, Suite 310  
San Francisco, CA 94103  
PROJECT IS: **APPROVED w/ Conditions**

---

On June 25, 2013, the Grand Junction Planning Commission approved the requested Conditional Use Permit (CUP) for a solar power generation facility (basic utility) on 14.34 acres in an R-8 (Residential 8 du/ac) and CSR (Community Services and Recreation) zone district. The project is located at 2930 and 2940 D ¼ Road, legally described as Lot 1 and Lot 2, respectively, of the Girardi Subdivision.

The Planning Commission found that the request was consistent with the goals and policies of the Comprehensive Plan; that review criteria of Section 21.02.110 of the Grand Junction Municipal Code (GJMC) have been met; and finding that submitted signage meets with the sign requirements for a CUP as specified in GJMC Section 21.02.110(d).

The Conditional Use Permit approval is **subject to the following conditions:**

- Easements for electrical distribution outside of the facility shall be secured and recorded.
- Lot 1 and 2 shall continue to function together as one site for the duration of the use, unless an amendment to the CUP is approved.
- Installation of landscaping as shown on the landscape plan within eighteen (18) months of approval of the CUP and maintenance of that landscaping for the duration of the use.

Once established the conditional use approval runs with the land unless the property changes use or the use is abandoned for a period of 12 consecutive months, pursuant to GJMC Section 21.02.110(g). The applicant must develop or establish such use within one (1) year from the date of approval pursuant to GJMC Section 21.02.080(n)(1)(ii). Failure to satisfy any condition of approval shall constitute sufficient basis to revoke this approval, as described in GJMC Section 21.02.110(h)(iii) and (iv).



Brian Rusche, Senior Planner  
[brusche@gjcity.org](mailto:brusche@gjcity.org)  
(970) 256-4058







**LANDSCAPE NOTES:**

1. FROM AN ENVIRONMENTAL AND CONSTRUCTION STANDPOINT, THE PROPOSED LANDSCAPE SHALL BE DESIGNED TO BE SUSTAINABLE AND RESILIENT TO CLIMATE CHANGE. THE DESIGN SHALL TAKE INTO ACCOUNT THE IMPACTS OF CLIMATE CHANGE, INCLUDING INCREASED DROUGHT, WILDFIRES, AND SEA LEVEL RISE. THE LANDSCAPE SHALL BE DESIGNED TO BE ADAPTIVE TO THESE CHANGING CONDITIONS. THE DESIGN SHALL BE BASED ON THE LATEST AVAILABLE SCIENTIFIC DATA AND RESEARCH.

2. ALL PLANT MATERIALS SHALL BE OBTAINED FROM LOCAL SOURCES, WHERE AVAILABLE, TO SUPPORT THE LOCAL ECONOMY AND REDUCE CARBON FOOTPRINT. PLANT MATERIALS SHALL BE OF HIGH QUALITY AND HEALTHY. ALL PLANT MATERIALS SHALL BE INSTALLED WITH PROPER CARE AND MAINTENANCE TO ENSURE LONG-TERM SURVIVAL AND GROWTH.

3. ALL PLANT MATERIALS SHALL BE INSTALLED WITH PROPER CARE AND MAINTENANCE TO ENSURE LONG-TERM SURVIVAL AND GROWTH. THE LANDSCAPE SHALL BE DESIGNED TO BE ADAPTIVE TO THESE CHANGING CONDITIONS.

4. ALL PLANT MATERIALS SHALL BE INSTALLED WITH PROPER CARE AND MAINTENANCE TO ENSURE LONG-TERM SURVIVAL AND GROWTH. THE LANDSCAPE SHALL BE DESIGNED TO BE ADAPTIVE TO THESE CHANGING CONDITIONS.

5. ALL PLANT MATERIALS SHALL BE INSTALLED WITH PROPER CARE AND MAINTENANCE TO ENSURE LONG-TERM SURVIVAL AND GROWTH. THE LANDSCAPE SHALL BE DESIGNED TO BE ADAPTIVE TO THESE CHANGING CONDITIONS.

6. ALL PLANT MATERIALS SHALL BE INSTALLED WITH PROPER CARE AND MAINTENANCE TO ENSURE LONG-TERM SURVIVAL AND GROWTH. THE LANDSCAPE SHALL BE DESIGNED TO BE ADAPTIVE TO THESE CHANGING CONDITIONS.

7. ALL PLANT MATERIALS SHALL BE INSTALLED WITH PROPER CARE AND MAINTENANCE TO ENSURE LONG-TERM SURVIVAL AND GROWTH. THE LANDSCAPE SHALL BE DESIGNED TO BE ADAPTIVE TO THESE CHANGING CONDITIONS.

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9. ALL PLANT MATERIALS SHALL BE INSTALLED WITH PROPER CARE AND MAINTENANCE TO ENSURE LONG-TERM SURVIVAL AND GROWTH. THE LANDSCAPE SHALL BE DESIGNED TO BE ADAPTIVE TO THESE CHANGING CONDITIONS.

10. ALL PLANT MATERIALS SHALL BE INSTALLED WITH PROPER CARE AND MAINTENANCE TO ENSURE LONG-TERM SURVIVAL AND GROWTH. THE LANDSCAPE SHALL BE DESIGNED TO BE ADAPTIVE TO THESE CHANGING CONDITIONS.

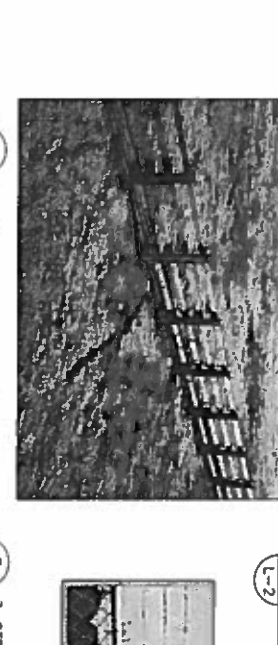
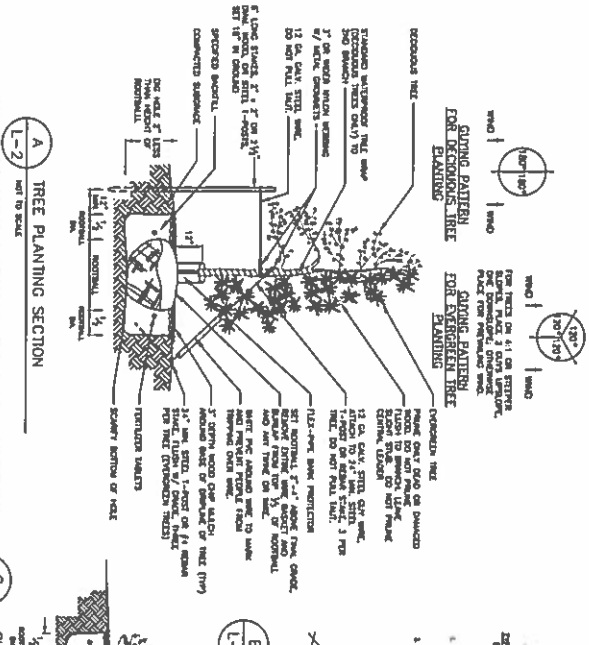
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12. ALL PLANT MATERIALS SHALL BE INSTALLED WITH PROPER CARE AND MAINTENANCE TO ENSURE LONG-TERM SURVIVAL AND GROWTH. THE LANDSCAPE SHALL BE DESIGNED TO BE ADAPTIVE TO THESE CHANGING CONDITIONS.

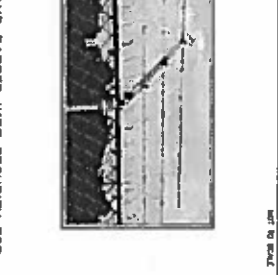
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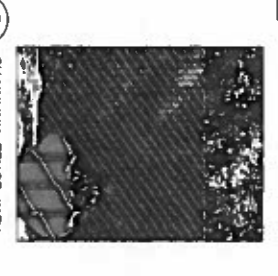
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**D 5 FT. 4-RAIL POST & RAIL FENCE**  
 1/2" TO SCALE



**F 3-STRAND BARBED WIRE SECURITY TOP**  
 1/2" TO SCALE



**E CHAINLINK FENCE WITH WINGED PRIVACY SLATS**  
 1/2" TO SCALE

**PLANT LEGEND: TREES = 11 TOTAL**

ITEM	DESCRIPTION	QUANTITY	REMARKS
1	18" DIA. ROOT BALL	11	
2	1" MULCH	11	
3	1" SOIL	11	
4	1" MULCH	11	
5	1" SOIL	11	
6	1" MULCH	11	
7	1" SOIL	11	
8	1" MULCH	11	
9	1" SOIL	11	
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92	1" MULCH	11	
93	1" SOIL	11	
94	1" MULCH	11	
95	1" SOIL	11	
96	1" MULCH	11	
97	1" SOIL	11	
98	1" MULCH	11	
99	1" SOIL	11	
100	1" MULCH	11	

**PLANT LEGEND: SHRUBS = 58 TOTAL**

ITEM	DESCRIPTION	QUANTITY	REMARKS
1	18" DIA. ROOT BALL	58	
2	1" MULCH	58	
3	1" SOIL	58	
4	1" MULCH	58	
5	1" SOIL	58	
6	1" MULCH	58	
7	1" SOIL	58	
8	1" MULCH	58	
9	1" SOIL	58	
10	1" MULCH	58	
11	1" SOIL	58	
12	1" MULCH	58	
13	1" SOIL	58	
14	1" MULCH	58	
15	1" SOIL	58	
16	1" MULCH	58	
17	1" SOIL	58	
18	1" MULCH	58	
19	1" SOIL	58	
20	1" MULCH	58	
21	1" SOIL	58	
22	1" MULCH	58	
23	1" SOIL	58	
24	1" MULCH	58	
25	1" SOIL	58	
26	1" MULCH	58	
27	1" SOIL	58	
28	1" MULCH	58	
29	1" SOIL	58	
30	1" MULCH	58	
31	1" SOIL	58	
32	1" MULCH	58	
33	1" SOIL	58	
34	1" MULCH	58	
35	1" SOIL	58	
36	1" MULCH	58	
37	1" SOIL	58	
38	1" MULCH	58	
39	1" SOIL	58	
40	1" MULCH	58	
41	1" SOIL	58	
42	1" MULCH	58	
43	1" SOIL	58	
44	1" MULCH	58	
45	1" SOIL	58	
46	1" MULCH	58	
47	1" SOIL	58	
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49	1" SOIL	58	
50	1" MULCH	58	
51	1" SOIL	58	
52	1" MULCH	58	
53	1" SOIL	58	
54	1" MULCH	58	
55	1" SOIL	58	
56	1" MULCH	58	
57	1" SOIL	58	
58	1" MULCH	58	
59	1" SOIL	58	
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61	1" SOIL	58	
62	1" MULCH	58	
63	1" SOIL	58	
64	1" MULCH	58	
65	1" SOIL	58	
66	1" MULCH	58	
67	1" SOIL	58	
68	1" MULCH	58	
69	1" SOIL	58	
70	1" MULCH	58	
71	1" SOIL	58	
72	1" MULCH	58	
73	1" SOIL	58	
74	1" MULCH	58	
75	1" SOIL	58	

