

## APPENDIX A SAMPLE AGREEMENT

### AGREEMENT

**THIS AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a home rule and municipal corporation of the State of Colorado (the “**City**”), and \_\_\_\_\_, a \_\_\_\_\_, whose address \_\_\_\_\_ (the “**Recipient**”) (together, the “**Parties**”).

### RECITALS

**WHEREAS**, there are public purposes for installing distributed energy resources (“**DERs**”) at buildings occupied by non-profit human service providers, including reducing greenhouse gas emissions to protect City residents and visitors from the adverse public health impacts associated with climate change and increasing the resiliency of operations for human service providers.

**WHEREAS**, the public purposes above will be furthered to a greater extent by buildings that install DERs than buildings that rely solely on electricity from the electric grid;

**WHEREAS**, incentives are needed to encourage building owners to install DERs to further the public purposes above;

**WHEREAS**, the Recipient is willing to install at its building, which is located within the City and County of Denver, DERs partly due to the availability of certain incentives provided by the City, as further described in this Agreement;

**WHEREAS**, this Agreement, and the installation at Recipient’s building of DERs within the City will advance the valid and valuable public purposes set forth above by reducing greenhouse gas emissions, increasing safety and increasing the resiliency of operations, as a result of the incentives described herein; and

**WHEREAS**, for these reasons, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **RECIPIENT OBLIGATIONS**. This Agreement and the City’s obligations hereunder are conditioned upon the following Recipient installing at its building located at \_\_\_\_\_ (the “**Building**”) DERs as set forth in **Exhibit A, the Scope of Work**.
2. **TERM**. The term of this Agreement shall commence on the date of execution set forth on the City’s signature page and shall expire twenty-four (24) months thereafter; provided, however, that this Agreement shall automatically terminate when the City’s payment(s) hereunder equal the Maximum Contract Amount. Subject to the Executive Director’s prior written authorization, the Recipient may complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.

3. **INCENTIVE PAYMENTS.** Subject to the terms hereof, the City agrees to make incentive payments to the Recipient payable as follows:
- a. **Budget.** The City shall reimburse Recipient for documented costs directly incurred by Recipient and allocable to the installation at the Building of DERs upon completion of each milestone of the Building’s conversion as further detailed in **Exhibit B, the Budget.** Recipients costs shall not exceed the line item amounts set forth in Exhibit B.
  - b. **Maximum Contract Amount.**
    - (1) Notwithstanding any other provision of the Agreement, the City’s maximum incentive payment obligation shall not exceed \_\_\_\_\_ (\$ \_\_\_\_\_) (the “**Maximum Contract Amount**”).
    - (2) The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for purposes of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple fiscal year direct or indirect debt or financial obligation of the City.
  - c. **Petitions for Payment.** To receive an incentive payment hereunder, the Recipient shall petition the Executive Director of Climate Action, Sustainability, and Resiliency or her designee (the “Executive Director”).
    - (1) The petition for incentive payment shall contain the Recipient’s supporting documentation evidencing eligible expenses as set forth in **Exhibit B**, and the Recipient’s satisfaction of the requirements contained in Section 1 above. To receive an incentive payment, the Recipient must petition the Executive Director at least forty-five (45) days before the expiration of the Term.
    - (2) The Recipient shall supply whatever additional information the City requests in order to substantiate the Recipient’s petition for incentive payments. The City may withhold incentive payments for which it has been petitioned by the Recipient if it reasonably determines that the petition is not substantiated by the supporting documentation submitted by the Recipient. Such determination shall be provided to the Recipient in writing and shall be appealable to the Executive Director.
    - (3) Upon receipt of documentation satisfying the requirements of this Section 2.c., the City shall verify the Recipient’s petition and issue proper incentive payment consistent with the City’s Prompt Payment Ordinance, D.R.M.C. §§ 20-107–118.
4. **EXAMINATION OF RECORDS.** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at City’s election in paper

or electronic form, any pertinent books, documents, papers and records related to the Recipient's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Recipient shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. 20-276.

5. **WHEN RIGHTS AND REMEDIES NOT WAIVED.** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Recipient. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.
6. **ASSIGNMENT AND SUBCONTRACTING.** The City is not obligated or liable under this Agreement to any party other than the Recipient. The Contractor shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City.
7. **INSURANCE.**
  - a. **General Conditions:** The Recipient agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The Recipient shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, the Recipient shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. The Recipient shall be responsible

for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Recipient. The Recipient shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- b. Proof of Insurance:** The Recipient may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. The Recipient certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of the Recipient's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- c. Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), the Recipient and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- d. Waiver of Subrogation:** For all coverages required under this Agreement, the Recipient's insurer shall waive subrogation rights against the City.
- e. Subcontractors and Subconsultants:** The Recipient shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Recipient and appropriate to their respective primary business risks considering the nature and scope of services provided.
- f. Workers' Compensation and Employer's Liability Insurance:** The Recipient shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- g. Commercial General Liability:** The Recipient shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.
- h. Automobile Liability:** The Recipient shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

**8. DEFENSE AND INDEMNIFICATION:**

- a. The Recipient hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of the Recipient or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.
- b. The Recipient’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. The Recipient’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.
- c. The Recipient will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.
- d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Recipient under the terms of this indemnification obligation. The Recipient shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.
- e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**9. COLORADO GOVERNMENTAL IMMUNITY ACT.** In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, et seq.

**10. TAXES, CHARGES AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City’s prompt payment ordinance D.R.M.C. § 20-107, et seq. The Recipient shall promptly pay when due, all taxes, bills, debts and obligations it incurs from installing DERs at the Building and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

**11. INUREMENT:** The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

- 12. NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Agreement, the Recipient may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Recipient shall insert the foregoing provision in all subcontracts.
- 13. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS.** This Agreement is intended as the complete integration of all understandings between the Parties. No prior, contemporaneous or subsequent addition, deletion, or other amendment hereto shall have any force or effect, unless embodied herein in writing, and executed in the same manner as this Agreement.
- 14. GOVERNING LAW; VENUE.** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).
- 15. LEGAL AUTHORITY.**
- a. The Recipient lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.
  - b. The Recipient represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.
  - c. The person or persons signing and executing this Agreement on behalf of the Recipient do hereby represent and warrant that he/she or they have been fully authorized by the Recipient to execute this Agreement on behalf of the Recipient and to validly and legally bind the Recipient to all the terms, performances and provisions herein set forth.
  - d. The City shall have the right, at its option, to temporarily suspend or permanently terminate this Agreement, if there is a dispute that the legal authority of either the Recipient or the person signing this Agreement on the Recipient's behalf is not sufficient to enter into this Agreement. The City shall not be obligated to the Recipient for any performance of the provisions of this Agreement in the event that the City has suspended or terminated this Agreement as provided in this Section.
- 16. NO THIRD PARTY BENEFICIARY.** Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in this Agreement gives or allows any

claim or right of action to any third person or entity. Any person or entity other than the City or the Recipient receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

**17. SEVERABILITY.** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

**18. CONFLICT OF INTEREST.**

- a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Recipient shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.
- b. The Recipient shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Recipient represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Recipient by placing the Recipient's own interests, or the interests of any party with whom the Recipient has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the Recipient written notice describing the conflict.

**19. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** The Recipient consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**20. COMPLIANCE WITH ALL LAWS.** The Recipient shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

**21. NOTICES.** All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to the Recipient at the address first above written, and if to the City at:

Executive Director of the Office of Climate Action, Sustainability & Resiliency or Designee  
201 West Colfax Avenue, Dept. 704  
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

22. **DISPUTES**. All disputes between the City and the Recipient arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Agreement.
23. **NO CONSTRUCTION AGAINST DRAFTING PARTY**. The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.
24. **ORDER OF PRECEDENCE**. In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.
25. **SURVIVAL OF CERTAIN PROVISIONS**. The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Recipient's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.
26. **ADVERTISING AND PUBLIC DISCLOSURE**. The Recipient shall not include any reference to the Agreement or to incentives paid pursuant to the Agreement in any of the Recipient's advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Recipient shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.
27. **CITY EXECUTION OF AGREEMENT**. The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**28. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS.** The Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

**List of Exhibits**

**Exhibit A** – Scope of Work

**Exhibit B** – Budget

**Exhibit C** – Insurance Certificate

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