

**NON-WIRES ALTERNATIVE
SERVICES AGREEMENT**

BETWEEN

**PUBLIC SERVICE COMPANY OF COLORADO
("COMPANY")**

AND

**[REDACTED]
("SERVICE PROVIDER")**



May 2023

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**NON-WIRES ALTERNATIVE SERVICES AGREEMENT
BETWEEN
PUBLIC SERVICE COMPANY OF COLORADO
AND**

[_____]

This Non-Wires Alternative Services Agreement (this “Agreement”) is made this [_____] day of [_____, 20_], by and between (i) **Public Service Company of Colorado**, a Colorado corporation with a principal place of business at 1800 Larimer Street, Suite 1000, Denver, Colorado 80202 (“Company”), and (ii) [_____] an [LLC] with a principal place of business at [_____] (“Service Provider”). Company and Service Provider are hereinafter referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS, the Colorado Public Utilities Commission (“CPUC”) has required the Company, in certain circumstances, to conduct a technology-neutral competitive solicitation for Non-Wires Alternatives (“NWA”) to defer, reduce, or avoid the costs of Major Distribution Grid Projects;

WHEREAS, the Company issued a technology-neutral request for proposals for Non-Wires Alternatives (“RFP”);

WHEREAS, Service Provider desires to sell and deliver such Non-Wires Alternative Services (“NWA Services”) as more fully described in Exhibit A –NWA Services attached to this Agreement, and Company desires to accept and receive such NWA Services on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

Article 1 - Rules of Interpretation

1.1 Interpretation.

(A) Capitalized terms listed in this Agreement shall have the meanings set forth in Article 2 - Definitions or as otherwise defined in this Agreement, whether in the singular or the plural or in the present or past tense. Words not otherwise defined in this Agreement shall (i) have meanings as commonly used in the English language, (ii) be given their generally accepted meaning consistent with Good Utility Practice, and (iii) be given their well-known and generally accepted technical or trade meanings.

(B) The following rules of interpretation shall apply: (1) references to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this

Agreement except as the context may otherwise require; (2) all Exhibits are incorporated into this Agreement (*provided, however*, that in the event of a conflict with the terms of this Agreement, the Agreement shall control); and (3) use of the words “include” or “including” or similar words shall be interpreted as “include without limitation” or “including, without limitation.”

(C) None of the provisions of this Agreement shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

1.2 Interpretation with Other Agreements. This Agreement does not modify the Parties’ rights and obligations under any applicable Rate Schedule (if Service Provider is a customer of Company) or existing service agreement between the Parties. This Agreement does not provide Service Provider with authorization to interconnect or inject power into the Distribution Authority’s System. Service Provider shall contract for any interconnection services in accordance with the applicable Distribution Tariff. Service Provider acknowledges that the Interconnection Agreement is/will be a separate contract and that (i) this Agreement is not binding on the Distribution Authority, (ii) this Agreement does not create any rights between Service Provider and the Distribution Authority no any obligations on Distribution Authority to Service Provider with respect to this Agreement, and (iii) the Interconnection Agreement does not modify the Parties’ rights and obligations under this Agreement. The applicable Distribution Authority shall be deemed to be a separate and unaffiliated contracting party for purposes of this Agreement, regardless whether such Distribution Authority is Company or an Affiliate of Company. To that end, any breach, dispute, or other issue related to the Distribution Authority’s performance under any Interconnection Agreement or other conduct by the Distribution Authority related to the Interconnection Procedures and Standards or an Interconnection Agreement shall not be considered a breach by the Company of its obligation of good faith and fair dealing or any other statutory or common law requirement with respect to this Agreement and Service Provider waives any and all claims at equity or law related thereto. Likewise, any breach, dispute, or other issue related to the Company’s performance of this Agreement or other conduct by Company related to this Agreement shall not be considered a breach by the Distribution Authority of its obligation of good faith and fair dealing or any other statutory or common law requirement under an Interconnection Agreement or the Interconnection Procedures and Standards and Service Provider agrees to waive any and all claims at equity or law related thereto.

1.3 Good Faith and Fair Dealing. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (a) when this Agreement specifically references the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) wherever this Agreement specifically gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be Commercially Reasonable.

Article 2 - Definitions

The following terms shall have the meanings set forth herein:

2.1 "Applicable Law" means all laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority that are applicable to a Party, the business of a Party or the NWA Services, now in effect or hereafter enacted, including amendments to or interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions.

2.2 "Business Day" means any Day that is not a Saturday, a Sunday, or a NERC recognized holiday.

2.3 "Capacity Need" shall have the meaning set forth in CPUC Rules, Sec. 3527.

2.4 "Commercial Operation" shall mean that all equipment required for provision by Service Provider of the NWA Services shall have been installed, tested, and commissioned, that equipment and facilities, if any, necessary to connect with the Company's distribution grid have been installed, tested, and commissioned, that requirements of any applicable Interconnection Agreement(s) necessary for provision of NWA Services have been satisfied, and that the NWA Services are operational and capable of achieving the NWA Services Guarantee.

2.5 "Commercial Operation Year" shall have the meaning set forth in Section 4.1(G).

2.6 "Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any action to be taken or attempted by a Party under this Agreement, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action at a reasonable cost; (b) is consistent with Good Utility Practices; and (c) takes into consideration the amount of advance notice required to take such action, the duration and type of action and the competitive environment in which such action occurs.

2.7 "CPUC" shall mean the Colorado Public Utilities Commission or any successor agency.

2.8 "CPUC Rules" shall mean the Colorado Public Utilities Commission's Rules Regulating Electric Utilities, codified at 4 Code of Colorado Regulations 723-3, as promulgated by the CPUC and amended from time to time. References in this Agreement to CPUC Rules shall include successor rules.

2.9 "Credit Rating" of any Person means the lowest rating assigned to such Person's long-term debt or deposit obligations (unenhanced by third-party support) by Standard & Poors and Moody's. If such Person has no outstanding long-term debt or deposit obligations, or if no rating is assigned to such obligations, "Credit Rating" shall

mean the lowest general corporate credit rating or long-term issuer rating assigned to such Person by Standard & Poors or Moody's.

2.10 "Day" means a calendar day.

2.11 "Demand Reduction" shall mean a reduction in load, congestion, or other constraints at specified locations on the grid.

2.12 "Demand Response Measures" or "Demand Response" or "DR" shall have the meaning set forth in CPUC Rules, Sec. 3527.

2.13 "Dispute" shall have the meaning set forth in Article XX.

2.14 "Distributed Energy Resources" or "DER" shall have the meaning set forth in CPUC Rules, Sec. 3527.

2.15 "Distribution Authority" means collectively those entities owning and/or operating the interconnected transmission system applicable to Service Provider pursuant to a Distribution Tariff, including (i) PSCo operating under and in accordance with its Distribution Tariff, and (ii) all entity(ies) responsible under the Interconnection Agreement for providing the transmission lines, any Interconnection Facilities and other equipment and facilities that interconnects at the Interconnection Point and distribution system.

2.16 "Distribution Authority's System" means the contiguously interconnected electric transmission and sub-transmission facilities, over which the Distribution Authority has rights (by ownership or contract) to provide transmission of energy from the Interconnection Point.

2.17 "Distribution System Plan" or "DSP" shall have the meaning set forth in CPUC Rules, Sec. 3527.

2.18 "Distribution Tariff" means the applicable tariff of the Distribution Authority, as amended from time to time.

2.19 "Effective Date" shall have the meaning set forth in Section 3.1.

2.20 "Energy Efficiency Measures" shall have the meaning set forth in CPUC Rules, Sec. 3527.

2.21 "Event of Default" shall have the meaning set forth in Article 7.

2.22 "Good Utility Practices" means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the electric utility industry pertaining to services of the similar type and size to the NWA Services that, at a particular time, in the exercise of Commercially Reasonable judgment, in light of the facts that are known (or reasonably should have been known) at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices is not limited to the optimum practice, method, standard or act to

the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the applicable segment of the electric power generation industry in the relevant region, during the relevant period.

2.23 “Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

2.24 “Grid Need” shall have the meaning set forth in CPUC Rules, Sec. 3527.

2.25 “Guarantor” shall have the meaning set forth in Section 7.3(C).

2.26 “Interconnection Agreement” means the separate contract for interconnection to the Distribution Authority’s System, as such agreement may be amended from time to time. For purposes of this Agreement, the Interconnection Agreement shall be interpreted to include any third party facility construction agreement or other agreement required by the Distribution Authority in accordance with the Distribution Tariff.

2.27 “Interconnection Point” means the physical point within the operational authority of the Distribution Authority at which electrical interconnection is made with the Distribution Authority’s System in accordance with the Distribution Tariff and the Interconnection Agreement.

2.28 “Investment Grade” means a Credit Rating of both (a) Baa3 or higher by Moody’s, and (b) BBB- or higher by Standard & Poors.

2.29 “kW” means kilowatt and “kWh” means kilowatt hour.

2.30 “Maintenance Schedule” is defined in Section 4.4(A).

2.31 “Major Distribution Grid Project” shall have the meaning set forth in CPUC Rules, Sec. 3527.

2.32 “Material Adverse Effect” means any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results in operations or condition (financial or otherwise), prospects, or property of a Party, its business, or this Agreement.

2.33 “Metering Point” means the physical point at which Service Provider makes available and delivers to Company the NWA Services being provided by Service Provider to Company under this Agreement. The Metering Point is specified in Exhibit A – Description of NWA Services.

2.34 “MVA” means megavolt amperes.

2.35 “MW” means megawatt or one thousand kW and “MWh” means megawatt hours.

2.36 “Non-Wires Alternative” or “NWA” shall have the meaning set forth in CPUC Rules, Sec. 3527.

2.37 “NWA Services” shall refer to those services specified in Exhibit A.

2.38 “NWA Services Guarantee” shall have the meaning set forth in Section 5.2.

2.39 “NWA Services Guarantee Breach” shall have the meaning set forth in Section 5.2.

2.40 “Operating Records” means all agreements associated with the NWA Services, operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that Service Provider uses or maintains for the operation of the NWA Services.

2.41 “Party” and “Parties” shall have the meanings set forth in the introductory paragraph.

2.42 “Required In-Service Date” is as defined in Section 4.1(C).

2.43 “Security Fund” shall have the meaning set forth in Section 7.1(A).

2.44 “Term” means the period of time during which this Agreement shall remain in full force and effect as further defined in Article 3.

2.45 “Year” means a calendar year.

Article 3 - Term and Termination

3.1 Term. This Agreement shall become effective as of the date of its execution (“Effective Date”), and shall remain in full force and effect until 11:59 pm on the last Day of the fifth (5th) Commercial Operation Year (the “Scheduled Termination Date”), subject to early termination as provided for in this Agreement.

3.2 Conditions Precedent

(A) PUC Approval.

1. No later than forty-five (45) Days after the Effective Date, Company may apply to the CPUC for PUC Approval. If Company fails to apply for PUC Approval within forty-five (45) Days following the Effective Date, Company shall be

deemed to have waived its right to obtain PUC Approval and to terminate this Agreement under this Section 3.2, and this Agreement shall remain in full force and effect thereafter.

2. If Company applies for PUC Approval, Company shall use Commercially Reasonable Efforts to obtain PUC Approval as soon as reasonably practicable. Seller shall cooperate with Company's efforts to obtain PUC Approval.

3. If Company applies for PUC Approval, Company shall have the right to terminate this PPA, without any further financial or other obligation to Seller as a result of such termination, by notice to Seller

a. at any time within 30 Days following issuance of a written order by the PUC rejecting PUC Approval, or granting PUC Approval with conditions unacceptable to Company in its sole discretion;

b. at any time between the two hundred fiftieth (250th) and two hundred eightieth (280th) Day] following Company's application for PUC Approval, if prior to the date of such termination the PUC has not issued a written order granting or rejecting PUC Approval;

c. at any time within thirty (30) Days following timely request for reconsideration (in whole or in any material part) by any third party with standing, of a written PUC order granting PUC Approval; and/or

d. at any time within thirty (30) Days following timely appeal by any party with standing, of a written PUC order granting PUC Approval.

If Company is eligible but fails to terminate this PPA by the applicable date, Company shall be deemed to have waived its right to terminate this PPA for that reason, and this PPA shall remain in full force and effect thereafter.

4. For purposes of this PPA, "PUC Approval" means a written order of the CPUC making an affirmative determination that all costs incurred under this Agreement are recoverable from Company's retail customers pursuant to Applicable Law, subject only to the requirement that the PUC retains ongoing prudency review of Company's performance and administration of this Agreement, as determined by Company in its sole discretion.

- (B) Other Company CPs. *[if any]*.
- (C) Service Provider CPs. *[if any - bid specific]*.
- (D) Return of Security Fund.

Following a termination pursuant to Section 3.2(A) *[or Section 3.2(C)]* *[or Section 3.2(D)]*, the Company will return to Seller the initial Security Fund within five (5) Business Days of such termination.

(E) The Service Provider must achieve Commercial Operations on or before the Required In-Service Date set forth in Section 4.1(C). Achievement of

Commercial Operation by such date and PUC Approval pursuant to Section 3.2 are conditions precedent for the Company's obligations set forth in this Agreement.

(F) Receipt by the Service Provider from applicable Governmental Authorities of all necessary permits, licenses, approvals, and authorizations necessary for approval of this Agreement and provision by Service Provider of the NWA Services is a condition precedent for the Company's obligations set forth in this Agreement.

3.3 Early Termination.

(A) Company may immediately terminate this Agreement upon written notice to Service Provider if Service Provider breaches any material obligation under this Agreement and fails to cure such breach within fifteen (15) calendar days after receiving written notice of the breach. Service Provider must notify Company in writing upon curing the identified breach.

(B) Service Provider may request to terminate this Agreement by submitting written notice to the Company. The termination will be effective on the later of (i) the beginning of the calendar month that is immediately after the initial 12 month term, and (ii) the beginning of the calendar month that is closest to but at least thirty (30) calendar days after the Company received the notice. Upon delivery of a termination notice pursuant to this Section, Service Provider shall pay to Company by check or wire transfer of immediately available funds, a termination payment in an amount equal to the total amount payable by Company to Service Provider during the remaining term of this Agreement ("Remaining Contract Value"),

3.4 Effect of Termination. Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to (i) provide for final billings, payments and adjustments, (ii) enforce or complete the duties, obligations or responsibilities of the Parties (including under [Section XX, Section XX, and Article XX] below), and (iii) address any remedies or indemnifications arising prior to termination.

Article 4 - Service Provider's Obligations

4.1 NWA Services. Service Provider shall deliver the NWA Services as described in Exhibit A – Description of NWA Services during the Term of this Agreement.

(A) Service Provider shall procure all equipment and services necessary to fulfill its obligations under this Agreement. Service Provider must also provide to Company the ability to appropriately inform Service Provider when the NWA Services are required to be delivered.

(B) If necessary to provide the NWA Services, Service Provider shall be responsible for arranging, maintaining and paying the costs associated with the interconnection to the Distribution Authority's System, and shall comply with the

Distribution Authority's requirements for interconnection and all requirements set forth in the applicable Distribution Tariff.

(C) Service Provider must cause the NWA Services to achieve Commercial Operation by [-] ("the "Required In-Service Date")

(D) Service Provider shall notify Company of the date on which Service Provider believes Commercial Operation has been achieved (a "COD Notice"). A COD Notice shall include all necessary supporting documentation of the satisfaction or occurrence of all COD Conditions. Company shall have ten (10) Business Days to review a COD Notice and raise any Commercially Reasonable objection to Service Provider's satisfaction of any of the COD Conditions, *provided, however*, that Service Provider's COD Notice shall be deemed accepted by Company if Company fails to object within such time period. Service Provider may notify Company of completion of one or more COD Conditions on an individual and incremental basis prior to COD, *provided, however*, that Company shall in all cases have up to ten (10) Business Days to review and object to each such notice.

(E) For purposes hereof, the "Commercial Operation Date" or "COD" means 12:01 am on the Day after which Service Provider's COD Notice has been accepted by Company or deemed accepted by Company pursuant to this Section.

(F) the "COD Conditions" are

1. an officer of Service Provider, authorized to bind Service Provider and who is familiar with the NWA Services, has confirmed in writing that:

a. all necessary and material Permits have been obtained, are in full force and effect and the entity granting the Permit has not placed any temporary or conditional restrictions or limitations on the Facility or its operation,

b. Seller is in compliance with this Agreement in all material respects,

c. the NWA Services are available to be provided in accordance with Service Provider's operating agreements, contracts, and manufacturers' warranties,

d. Service Provider has proven to Company's reasonable satisfaction that

i. Service Provider and the Distribution Authority have executed the Interconnection Agreement, if

any, and Service Provider has received no notice of breach thereof from the Distribution Authority,

ii. Service Provider has or is capable of declaring commercial operation under the Interconnection Agreement, if any, and

iii. Seller has made all other arrangements necessary to deliver the NWA Services during the Term;

e. Seller has executed and delivered to Company all Security Fund documents or instruments required under Article XXX.

(G) For purposes hereof, the first "Commercial Operation Year" shall mean the period starting at 12:01 a.m. on January 1st following the Commercial Operation Date and ending at 11:59 pm on the last Day of such calendar year, and each successive "Commercial Operation Year" shall mean the 12-month period following the prior Commercial Operation Year.

1. If necessary to provide the NWA Services, Service Provider shall be responsible for arranging, maintaining and paying the costs associated with the interconnection to the Distribution Authority's System, if any,, and shall comply with the Distribution Authority's requirements for interconnection and all requirements set forth in the applicable Distribution Tariff, to the extent required for the provision of the NWA Services.

4.2 NWA Services Guarantee.

(A) Service Provider guarantees that the NWA Services provided for in Exhibit A –NWA Services will, when installed: (1) achieve at least ninety percent (90%) of the kW of Demand Reduction provided for in Exhibit A –NWA Services during a Peak Demand Event for the specified duration; (2) provide such Demand Reduction at the portion(s) of the distribution grid specified in Exhibit A –NWA Services; and (3) be operationally available by the Required In-Service Date (the foregoing clauses (1) through (3) being collectively referred to herein as the "NWA Services Guarantee").

(B) Service Provider guarantees that it can and will achieve the Delivery of NWA Services Guarantee when the Company declares a Peak Demand Event applicable to the Service Provider's NWA Services.

(C) Service Provider's receipt of Payments under this Agreement is conditioned upon the truth and accuracy of its NWA Services Guarantee and the performance of its obligations hereunder.

4.3 Measurement and Verification.

(A) The kW Demand Reduction delivered by Service Provider will be measured at the Metering Point by the Company or a third-party contractor selected and retained by the Company. Service Provider shall fund the cost of any additional advanced

metering equipment that the Company determines, in its sole discretion, is necessary to measure and verify the NWA Services provided.

(B) In lieu of Section 5.3(A), above, and if deemed appropriate by mutual agreement of the Parties, the measurement and verification protocols to measure Demand Reduction for the NWA Services that may be established in a measurement and verification plan ("M&V Plan"). The M&V Plan will include, among other things, witness testing and appropriate verification.

(C) Payment to Service Provider for the NWA Services pursuant to Article 6 is dependent upon measurement and verification. Performance data of the NWA Services will be reviewed and verified as established in the M&V Plan before Payment is remitted to Service Provider. Company shall have full rights to audit the books and records of Service Provider to determine compliance with this Agreement and the Delivery of NWA Services Guarantee.

4.4 Operations and Maintenance. Service Provider shall maintain any facilities necessary to deliver the NWA Services in accordance with Good Utility Practices. Such maintenance shall include replacement or repair, whichever is appropriate under Good Utility Practices, of degraded or damaged equipment, and other such other maintenance as is necessary to continue to reliably deliver the NWA Services.

(A) Service Provider shall provide the Company with a schedule of the expected Scheduled Outages for the NWA Services for the first year following the Effective Date ("Maintenance Schedule"), including the start time and expected duration of the outage. Service Provider shall update the Maintenance Schedule annually. Absent the prior written consent of the Company, Service Provider shall schedule all its outages during the months of October and November.

(B) Service Provider shall maintain an accurate and up-to-date record of every time the NWA Services are dispatched by the Company, and shall deliver such information to the Company within five Business Days after the end of any month in which the NWA Services are dispatched.

(C) Representatives of Company shall have access to any facilities necessary to deliver the NWA Services from time to time, on Commercially Reasonable prior notice, to read and/or test meters, perform inspections and take such other actions as may be appropriate to facilitate Company's performance under this Agreement.

(D) Service Provider may indicate that certain information and data to which the Company is given access is confidential and certain other information may be confidential pursuant to applicable data privacy laws ("Confidential Information"). Regardless of the confidentiality, all such Confidential Information may be subject to: 1) state and federal freedom of information and open records act laws; 2) review by the appropriate state jurisdiction; 3) any other governmental authority or judicial body with jurisdiction relating to these matters; and 4) legal and regulatory discovery. Under such circumstances, the Company shall notify the Service Provider regarding such circumstances to allow it to seek a protective order, as appropriate, or otherwise prevent

the disclosure of the Confidential Information, as legally permitted. The Company shall make all reasonable efforts to preserve the confidentiality of the Confidential Information, but Service Provider and the Company acknowledge that such treatment is neither automatic nor guaranteed. The Company and Respondent also specifically anticipate that Confidential Information may be filed with the CPUC and agree to such disclosure provided the filing party seeks an appropriate protective order.

4.5 Removal of Equipment. Service Provider agrees that any and all project-related removal and disposal of equipment or materials, including disposal because equipment, facilities, or materials have reached the end of useful life and/or as a result of a termination of this Agreement, will be conducted at its sole cost and expense and in accordance with all applicable laws, rules, and regulations.

Article 5 - Payment

5.1 Payment to Service Provider. The Company will pay Service Provider for the NWA Services services rendered under this Agreement as follows.

(A) In exchange for being available to provide the Delivery of NWA Services Guarantee during Peak Demand Events, the Company will make Payments to Service Provider as set forth in Exhibit A –NWA Services.

(B) Subject to the other applicable provisions of this Agreement, Company will make each annual NWA Services Payment in a single lump sum on the last day of each Commercial Operation Year during the Term of this Agreement, *provided*, that the Company will only make Payments if (1) the Service Provider performed during Peak Demand Events during the applicable Year, and (2) the Demand Reduction provided by Service Provider was verified as provided in this Agreement.

Article 6 - Security for Performance

6.1 Security Fund.

(A) During the Term of this Agreement, Service Provider shall fund and maintain security in favor of Company, at Service Provider's expense, to secure Service Provider's obligations to Company under this Agreement (the "Security Fund"), in accordance with this Article 6.

(B) Service Provider shall establish and fund the initial Security Fund in the amount of *no less than the Total Contract Value defined as the sum of all yearly*

payments set forth in Exhibit C –NWA Services Payment Rate, for the Contract Term, no later than 30 Days following the Effective Date.

(C) Company may draw from the Security Fund such amounts as are necessary to recover amounts owing to Company pursuant to this Agreement, including but not limited to any Penalties, Actual Damages, or any amounts for which Company is entitled to indemnification under this Agreement. Company may, in its sole discretion, draw all or any part of such amounts from any form of security to the extent available pursuant to this Article 6 and in any sequence Company may select. Company's failure or delay to draw any amount from the Security Fund in any instance shall not prejudice Company's rights to subsequently recover such amount from the Security Fund or in any other manner.

(D) Company shall notify Service Provider within 5 Business Days following any draw on the Security Fund by Company, including the amount thereof and the basis therefor.

6.2 Form.

(A) The Security Fund may be in the form of an irrevocable standby letter of credit substantially in the form of Exhibit D - Form of Letter of Credit (a "Letter of Credit") from a financial institution acceptable to Company ("Issuer").

1. The Issuer of the Letter of Credit shall have and maintain a Credit Rating equivalent to A- (or better) by Standard & Poors and A3 (or better) from Moodys. If such Credit Rating is A- or A3, the Issuer must not be on credit watch by any rating agency.

2. The Letter of Credit must be for a minimum term of 360 Days. Service Provider shall give Company at least 30 Days advance notice prior to any expiration or earlier termination of the Letter of Credit. Service Provider shall cause the renewal or extension of the Letter of Credit for additional consecutive terms of 360 Days or more (or, if shorter, the remainder of the Term) more than 30 Days prior to each expiration date of the security. If the Letter of Credit is not renewed or extended at least 30 Days prior to its expiration date or otherwise is terminated early, Company shall have the right to draw immediately upon the Letter of Credit and to place the amounts so drawn, at Service Provider's cost and with Service Provider's funds, in an Escrow Account in accordance with paragraph (B) below, until and unless Service Provider provides a substitute form of security meeting the requirements of this Section XX.

(B) The Security Fund may be in the form of U.S. currency deposited into an escrow account with a state- or federally-chartered commercial bank with an office in the State of Colorado, with net assets of at least \$1 billion (the "Escrow Account").

1. The Escrow Account shall be governed by an escrow and account control agreement in form mutually satisfactory to Service Provider, Company and the escrow agent, provided that (a) Company shall hold a first and exclusive perfected security interest in the funds in the Escrow Account, (b) Company shall be permitted unilaterally to draw down any amount therein, regardless of any protest by Service

Provider or any other party liable thereon (*provided* that nothing in the Escrow Agreement shall preclude any protest against Company by Service Provider, following any draw, that such draw did not comply with this Agreement), and (c) Service Provider shall pay all fees and expenses of the escrow agent.

2. Funds held in the Escrow Account may be invested as Service Provider may direct in any of the following:

- a money-market fund sponsored by the escrow agent;
- U.S. treasury obligations with a maturity of 90 Days or less;
- commercial paper rated “A” or better, with a maturity of 90 days or less; and
- other liquid investment-grade investments with maturities of three months or less, approved by Company in advance (such approval not to be unreasonably withheld or delayed).

3. All investment income on the Escrow Account shall be taxable to, and accrue for the benefit of, Service Provider. After the Commercial Operation Date, periodic sweeps by Service Provider for recovery of interest earned by the escrowed funds shall be allowed, and if at any time the balance in the Escrow Account exceeds the required amount of security, the escrow agent may remit the excess to Service Provider.

(C) The Security Fund may consist of a guaranty substantially in the form of Exhibit E – Form of Guaranty, from a parent or other guarantor (“Guarantor”) with a minimum of net worth of at least \$250,000,000 and an Investment Grade Credit Rating (and if such Credit Rating is exactly equivalent to BBB- [S&P] / Baa3 [Moody’s], the Guarantor must not be on credit watch by any rating agency). If the Credit Rating of the Guarantor is downgraded below Investment Grade, put on credit watch, or an event occurs that (in the reasonable determination of Company) portends a Material Adverse Effect in the creditworthiness of the Guarantor, then Company may require Service Provider to convert the guaranty to a Security Fund instrument meeting the criteria set forth in either paragraph (A) or paragraph (B) above no later than 10 Days after notice from Company.

(D) Company shall negotiate in good faith any needed escrow and account control agreement and, upon request by Service Provider, immaterial changes to Exhibit D – Form of Letter of Credit and/or Exhibit E – Form of Guaranty, provided that Service Provider shall pay or reimburse Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in connection therewith.

(E) Service Provider may change the form of the Security Fund at any time and from time to time upon Commercially Reasonable prior notice to Company, *provided, however*, that the Security Fund must at all times satisfy the requirements of this Article XX.

6.3 Replacement. In the event that the Security Fund ever fails to comply with the requirements of this Article 6 or Company determines in a commercially reasonable

manner that an event has occurred or circumstances have developed that threaten to cause the Security Fund to fail to comply with the requirements of this Article XX (e.g. a Guarantor is placed on negative credit watch by a rating agency), Service Provider shall be required to replace the Security Fund with security in compliance with this Article XX within 5 Days following notice thereof from Company.

6.4 Survival. The Security Fund shall survive termination of this Agreement to be available to pay any amounts owed to Company arising prior to or upon termination. Company may draw such amounts and shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Service Provider.

6.5 Expenses. Service Provider shall reimburse Company for its direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the preparation, negotiation, execution and/or release (including making a draw of funds) of the Security Fund under this Article 6.

Article 7 - Default and Damages

7.1 Default by Service Provider: General

(A) Events. Any of the following events shall constitute a default by under this Agreement. If no cure period is provided below, such default shall be deemed an Event of Default by Service Provider immediately upon its occurrence. If a cure period is provided below, such default shall mature into an Event of Default if not cured within the indicated cure period, subject to Section 7 below.

1. Service Provider's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for Service Provider or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) Days from inception.

Cure Period: None.

2. Service Provider's authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against Service Provider without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) Days from its inception or which result in adjudication of bankruptcy or insolvency within such time.

Cure Period: None.

3. Service Provider's assignment of this Agreement not permitted by Section 11.2.

Cure Period: None.

4. Any representation or warranty by Service Provider in this Agreement that has a Material Adverse Effect on Service Provider's ability to perform this Agreement is proven to have been false in any material respect when made.

Cure Period: None.

5. Service Provider's failure to establish and, once established, maintain the Security Fund as and in the amounts required under Article 6.

Cure Period: Five (5) Business Days after Company provides notice of Service Provider's failure.

6. Service Provider's failure to obtain and maintain insurance in scope and amounts required under Article 16.

Cure Period: Five (5) Business Days after Company provides notice of Service Provider's failure.

7. Service Provider's failure to make any payment to Company as and when required by this Agreement, including Liquidated Damages, Actual Damages, and any required indemnification.

Cure Period: Ten (10) Business Days after Company provides notice that the amount is overdue.

8. Any representation or warranty by Service Provider in this Agreement that has a Material Adverse Effect on Service Provider's ability to perform this Agreement ceases to remain true during the Term, other than due to a change of law.

9. Subject to Section 7.2, failure for Services Provider to deliver the NWA Services when called upon

Cure Period: None.

10. If, at any time during the Term of this Agreement the Company learns that the equipment necessary to deliver the NWA Services was not actually or properly installed, or no longer meets the NWA Services Guarantee,

Cure Period: None.

11. The breach by Service Provider of the Interconnection Agreement, if any, which breach (i) materially interferes with Service Provider's delivery of the NWA Services or Company's ability to accept or receive such NWA Services, and/or (ii) otherwise has a Material Adverse Effect on Company.

Cure Period: Thirty (30) Days from the breach or the cure period allowed by the Interconnection Agreement (whichever is longer)

(B) Remedies for Default. In connection with any default by Service Provider under this Section 7.1 (whether or not cured by Service Provider, Company may:

1. Subject to Section 7.2, obtain Liquidated Damages as provided for in this Agreement; and,
2. Seek Actual Damages in such amounts and on such basis for the default as authorized by this Agreement; and,
3. Offset against any payments due to Service Provider, any Actual Damages and other amounts due from Service Provider; and
4. Draw any Liquidated and Actual Damages and other amounts due from Service Provider, from the Security Fund.

(C) Termination for Event of Default. Upon and at any time following an Event of Default by Service Provider under this Section 7.1, in addition to its rights under Section 7.1 above, Company may terminate this Agreement immediately upon notice to Service Provider, without penalty or further obligation to Service Provider. In connection with any such termination, Company may collect from Seller all Actual Damages arising from such Event of Default through the Scheduled Termination Date.

7.2 Service Provider's Default for Underperformance and Non-Performance. Service Provider acknowledges that Company's agreement to make Payment to Service Provider is contingent upon the truth and accuracy of Service Provider's NWA Services Guarantee, its other representations and warranties herein, and the performance by Service Provider of its obligations hereunder. The Parties acknowledge and agree that the amount of damages that Company would suffer as a result of a NWA Services Guarantee Breach would be substantial but difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient due, among other things, to the timeframes and processes associated with planning and constructing electric distribution infrastructure, and that the Liquidated Damages constitute a reasonable approximation of the harm or loss. The Parties further acknowledge and agree that the Liquidated Damages provided for herein are not punitive nor in the nature of a penalty.

(A) Upon Service Provider's first failure to achieve at least ninety percent (90%) of the Demand Reduction for the required duration as provided in Exhibit A –NWA Services during a Peak Demand Event ("NWA Services Guarantee Breach"), then Service Provider will be obligated (without limiting Company's other rights and remedies under this Agreement, at law or in equity), immediately upon the occurrence of such Delivery of NWA Services Guarantee Breach, to pay to Company by check or wire transfer of immediately available funds the applicable Liquidated Damages equal to the total amount payable by Company to Service Provider for the Commercial Operation Year in which the first NWA Services Guarantee Breach occurred, which amount the Parties agree is specifically intended to be a Liquidated Damages amount and not a penalty.

(B) Upon Service Provider's second NWA Services Guarantee Breach, Company shall be entitled to terminate this Agreement in whole or in part, effective upon notice, and shall be relieved of any responsibility to make any further Payments (Service Provider hereby releasing and forever discharging the Company from any and all losses,

liabilities, claims, costs and expenses resulting from Service Provider's failure to receive such incentive payments in accordance with the foregoing).

7.3 Default by Company: General.

(A) Events. Any of the following events shall constitute a default under this Agreement. If no cure period is provided below, such default shall be deemed an Event of Default by Company immediately upon its occurrence. If a cure period is provided below, such default shall mature into an Event of Default if not cured within the indicated cure period, subject to Section 7 below.

1. Company's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for Company or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) Days from inception.

Cure Period: None.

2. Company's authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against Company without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) Days from its inception or which result in adjudication of bankruptcy or insolvency within such time.

Cure Period: None.

3. Company's assignment of this Agreement not permitted by Section 11.2.

Cure Period: None.

4. Any representation or warranty by Company in this Agreement that has a Material Adverse Effect on Company's ability to perform this Agreement is proven to have been false in any material respect when made.

Cure Period: None.

5. Company's failure to make any payment to Service Provider as and when required by this Agreement, including Actual Damages, and any required indemnification.

Cure Period: Ten (10) Business Days after Service provider provides notice that the amount is overdue.

6. Any representation or warranty by Company in this Agreement that has a Material Adverse Effect on Company's ability to perform this Agreement ceases to remain true during the Term, other than due to a change of law.

(B) The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to all direct damages proximately caused by such default ("Actual Damages") incurred by the non-defaulting Party. **Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, special, treble, equitable or indirect damages, regardless of whether the relevant cause of action arises from statute, tort or contract** (except to the extent expressly provided herein); *provided, however*, that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for all such damages.

(C) To the extent damages required to be paid hereunder are liquidated, the Parties acknowledge that actual damages would be substantial but difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

7.4 Cumulative Remedies. Except as explicitly provided to the contrary in this Agreement, each right or remedy of the Parties provided for in this Agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this Agreement, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any other rights or remedies provided for herein.

7.5 Duty to Mitigate. Each Party shall use Commercially Reasonable Efforts to mitigate any damages it may incur as a result of a default by the other Party under this Agreement.

Article 8 - Dispute Resolution

8.1 Disputes. The Company will have sole discretion to determine the final resolution of any and all issues pertaining to this Agreement, including, but not limited to, project eligibility, energy savings, peak Demand Reduction, and Payment amounts payable.

8.2 Governing Law. The interpretation and performance of this Agreement, and all actions related hereto (whether sounding in contract, tort or otherwise), shall be governed and construed in accordance with the laws of the State of Colorado, exclusive of conflict of laws principles.

8.3 Venue. The Parties submit to the exclusive jurisdiction of the state courts of the State of Colorado for purposes of resolving any Dispute hereunder. Venue for any court proceedings shall lie exclusively in the Colorado District Court for the City

and County of Denver or, if jurisdictionally available, the U.S. District Court for the District of Colorado.]

8.4 Waiver of Jury Trial. **Service Provider and Company each hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury** in respect of any litigation based hereon, or arising out of, under, or in connection with, this Agreement or any course of conduct, course of dealing, statements (whether oral or written) or actions of Service Provider and Company related hereto and expressly agree to have any Disputes be adjudicated by a judge of the court having jurisdiction, without a jury.

Article 9 - Representations and Warranties

9.1 Each Party hereby represents and warrants to the other as follows, which representations and warranties shall be deemed to be repeated, if applicable, by each Party throughout the Term:

(A) Such Party is a valid separate legal entity, duly organized, validly existing and in good standing under Applicable Law. It is qualified to do business in the State of Colorado and it has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

(B) The Party's execution, delivery, and performance of all of its obligations under this Agreement have been duly authorized by all necessary organizational action, and do not and will not:

1. require any consent or approval by any governing corporate or management body, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to the other Party upon its request);

2. violate any Applicable Law, the violation of which could have a Material Adverse Effect on the representing Party's ability to perform its obligations under this Agreement;

3. result in a breach or constitute a default under the representing Party's formation documents, bylaws or equivalent, or under any agreement relating to its management or affairs or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which it is a party or by which it or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this Agreement; or

4. result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature upon or with respect to any of the assets or properties of the representing Party now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this Agreement.

(C) This Agreement is a valid and binding obligation of the representing Party.

(D) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the representing Party is a party or any judgment, order, or Applicable Law, applicable to it or its business.

Article 10 - Indemnification and Insurance

10.1 Indemnification.

(A) To the fullest extent permitted by law, Service Provider shall indemnify, defend and hold harmless Company, and its parent company, subsidiaries, affiliates and their respective shareholders, officers, directors, employees, agents, representatives, successors and assigns (collectively, the "Indemnified Parties"), from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses, including without limitation reasonable attorneys' fees ("Claim"), resulting from (a) any breach of the representations, warranties, covenants and obligations of Service Provider under this Agreement, (b) any act or omission of Service Provider, whether based upon Service Provider's negligence, strict liability or otherwise, in connection with the performance of this Agreement, or (c) any third party claims of any kind, whether based upon negligence, strict liability or otherwise, arising out of or connected in any way to Service Provider's performance or nonperformance under this Agreement.

(B) If any Claim is brought against the Indemnified Parties, Service Provider shall assume the defense of such Claim, with counsel reasonably acceptable to the Indemnified Parties, unless in the opinion of counsel for the Indemnified Parties a conflict of interest between the Indemnified Parties and Service Provider may exist with respect to such Claim. If a conflict precludes Service Provider from assuming the defense, then Service Provider shall reimburse the Indemnified Parties on a monthly basis for the Indemnified Parties' reasonable defense costs through separate counsel of the Indemnified Parties' choice. If Service Provider assumes the defense of the Indemnified Parties with acceptable counsel, the Indemnified Parties, at their sole option and expense, may participate in the defense with counsel of their own choice without relieving Service Provider of any of its obligations hereunder.

(C) Service Provider's obligation to indemnify the Indemnified Parties shall survive the expiration or termination of this Agreement.

10.2 Insurance.

(A) Service Provider shall maintain during the term of this Agreement, at its own expense, employers' liability and workers' compensation insurance providing benefits in accordance with the laws and regulations of the State of Colorado.

(B) Service Provider shall maintain, during the term of the Agreement, at its own expense commercial general liability insurance, including premises and

operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars (\$1,000,000) per occurrence/One Million Dollars (\$1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

(C) Service Provider shall maintain, during the term of the Agreement, at its own expense comprehensive automobile liability insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.

(D) Service Provider shall maintain, during the term of the Agreement, at its own expense excess public liability insurance over and above the employers' liability, commercial general liability, and comprehensive automobile liability insurance coverage, with a minimum combined single limit of Ten Million Dollars (\$10,000,000) per occurrence/Ten Million Dollars (\$10,000,000) aggregate.

(E) The insurance required by this Section 10.2 shall, by endorsement to the policy or policies, provide for thirty (30) calendar days' written notice to Public Service prior to cancellation, termination, alteration, or material change of such insurance.

(F) The commercial general liability insurance, comprehensive automobile Insurance and excess public liability insurance policies shall name the Company, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees as additional insureds.

(G) The commercial general liability insurance, comprehensive automobile liability insurance, and excess public liability insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies or self-insurance maintained by Public Service.

(H) The commercial general liability insurance, comprehensive automobile liability insurance, and excess public liability insurance policies, if written on a claims first made basis, shall be maintained in full force and effect for two (2) years after

termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Company.

(I) The requirements contained herein as to the types and limits of all insurance to be maintained are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Service Provider.

(J) Evidence of the insurance required in this Section 10.2 shall state that coverage provided is primary and is not excess to or contributing with any insurance or self-insurance maintained by Public Service.

(K) If Service Provider is self-insured with an established record of self-insurance, the Customer may comply with the following in lieu of Section 10.2 (B) – (L):

1. Service Provider shall provide to Public Service, at least thirty (30) days prior to the date of initial operation, evidence of an acceptable plan to self-insure to a level of coverage equivalent to that required under Section 10.2(B) – (D).

2. If Service Provider ceases to self-insure to the level required hereunder, or if the Service Provider is unable to provide continuing evidence of its ability to self-insure, Service Provider agrees to immediately obtain the coverage required under Section 10.2(B) – (L).

(L) Service Provider shall provide Public Service certificates of insurance evidencing the requisite coverage and provisions prior to the Required In-Service Date. Afterwards, Public Service may periodically request proof of current insurance coverage in order to verify compliance with the requirements of this Section 10.2. Upon receipt of any such request, the Service Provider shall provide certificates of insurance evidencing the requisite coverage and provisions. Failure of Service Provider to provide timely evidence of proper insurance shall constitute a material breach and may result in Early Termination pursuant to Section 3.2.

(M) Failure of Service Provider or Public Service to enforce or maintain the minimum levels of insurance does not relieve Service Provider from its obligation to maintain such levels of insurance or relieve Service Provider of any liability.

(N) The Parties agree to promptly notify each other, in writing, of any personal injury or damage to property apparently or actually related to the provision of services pursuant to this Agreement.

Article 11 - Miscellaneous

11.1 Notices.

(A) For coordination purposes, any notice or other communication (but not including invoices or routine correspondence relating to performance by Service Provider) given under this Agreement to any party must be in writing and must be sent by hand or overnight mail service, or registered or certified United States mail, return receipt

requested, to the attention of the other Party at the addresses noted in Exhibit F – Notices and Contact Information.

(B) The Parties recognize the need for accurate communications between them. Each Party consents to the recording of telephone conversations between their employees and representatives, related to the performance and administration of this Agreement.

11.2 Non-Assignment. Neither this Agreement, nor any part or the whole of any project arising hereunder, and to include no part or the whole of any work associated with any project, may be assigned, delegated, subcontracted, or otherwise transferred by Service Provider without the prior written approval of the Company in each case. Service Provider shall give Company at least 90 days' notice for any planned assignment of this Agreement or a project arising hereunder.

11.3 Severability. In the event any of the terms, covenants, or conditions of this Agreement, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the Agreement and their application not adversely affected thereby shall remain in force and effect; *provided, however, that* Company and Service Provider shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

11.4 Complete Agreement; Amendments. The terms and provisions contained in this Agreement constitute the entire agreement between Company and Service Provider with respect to the NWA Services and shall supersede all previous communications, representations, or agreements, either verbal or written, between Company and Service Provider with respect to the NWA Services. Any amendment of this Agreement, or any waiver of any provision hereof, shall be evidenced by a writing signed by the Parties to be bound thereby.

11.5 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

11.6 Headings. Captions and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

11.7 Counterparts. This Agreement may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

11.8 Exhibits. Either Party may change the information in Exhibit F – Notices and Contact Information at any time by notice without the approval of the other Party. All

other Exhibits may be changed to the extent allowed by specific provisions of this Agreement or with the mutual consent of both Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

Service Provider:

By: _____

Company:

Public Service Company of Colorado

By: _____

EXHIBIT A

NWA SERVICES

(All sections of this form must be completed and attached to a fully executed Non-Wires Alternative Services Agreement)

Service Provider Information

Name of Service Provider _____

Mailing Address _____

(Street number and name)

(Suite number)

(City, state, zip code)

Nature of Business _____

Contact Person _____ Title _____

Email _____ Phone _____

Non-Wires Alternative Services Details

Project Name _____

Project Site Location _____

NWA Location _____

Metering Point _____

NWA Category: *(check all that apply)*

- Demand Response Energy Efficiency Energy Storage
- Distributed Generation Other *(describe in Summary)*

EXHIBIT B NWA SERVICES GUARANTEE

EXHIBIT C NWA SERVICES PAYMENT RATE

NWA Services Payment Rate

In exchange for the NWA Services described above, and subject to the terms and conditions set forth in the Agreement, the Company agrees to pay Service Provider the following in each Year of the Agreement, beginning in the Year in which the Required In-Service Date occurs:

Required In-Service Date _____

Commercial Operation Year

1 \$ _____

2 \$ _____

3 \$ _____

4 \$ _____

5 \$ _____

6 \$ _____

7 \$ _____

EXHIBIT D FORM OF LETTER OF CREDIT

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit Date of Issuance: _____

No: _____

Beneficiary: [Public Service Company Initial Expiration Date: [Must be at least
of Colorado] one year after date of issuance]

Applicant:

As the Issuing Bank ("Issuer"), we, [Name of Issuing Bank], hereby establish this irrevocable Standby Letter of Credit No. (this "Letter of Credit") in favor of the above-named beneficiary ("Beneficiary") for the account of the above-named applicant ("Applicant") in the amount of US\$ _____ (_____ Million U.S. Dollars).

Beneficiary may draw all or any portion of this Letter of Credit at any time and from time to time, and Issuer will make funds immediately available to Beneficiary upon presentation of Beneficiary's draft(s) at sight in substantially the form attached hereto as Exhibit "A" ("Sight Draft"), drawn on Issuer and accompanied by this Letter of Credit. All Sight Drafts must be signed on behalf of Beneficiary, and the signator must indicate his or her title or other official capacity. No other documents will be required to be presented. Issuer will effect payment under this Letter of Credit within twenty-four (24) hours after presentment of any Sight Draft. Payment shall be made in U.S. Dollars with Issuer's own funds in immediately available funds.

Issuer will honor any Sight Draft presented in substantial compliance with the terms of this Letter of Credit at the Issuer's letterhead office, the office located at _____ or any other full service office of the Issuer on or before the above-stated expiration date, as such expiration date may be extended hereunder. Partial and multiple draws and presentations are permitted on any number of occasions. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary.

This Letter of Credit is issued pursuant to the provisions of that certain Solar Generating and Battery Storage Energy Purchase Agreement between Beneficiary and Applicant dated as of _____, 20 (as the same may have been or may be amended from time to time, the "PPA"). Notwithstanding any reference in this Letter of Credit to the PPA or any other documents, instruments or agreements, or references in the PPA or any other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit will be automatically extended each year without amendment for a period of one (1) year from the expiration date hereof, as extended, unless at least thirty

(30) days prior to the expiration date, Issuer notifies Beneficiary by registered or certified mail that it elects not to extend this Letter of Credit for such additional period. Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary's address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer's letterhead address.

This Letter of Credit is freely transferable by Beneficiary in whole or in part, and the number of transfers is unlimited. Issuer shall effect any transfers immediately upon presentation to Issuer of this Letter of Credit and a completed written transfer request substantially in the form attached hereto as Exhibit "B." Such transfer will be effected at no cost to Beneficiary. Any transfer fees assessed by Issuer will be payable solely by Applicant, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer of this Letter of Credit.

Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims which Beneficiary may have against Applicant or Applicant may have against Beneficiary.

This Letter of Credit is subject to the uniform customs and practice for documentary credits (2007 Revision), International Chamber of Commerce publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control that interrupts Issuer's business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

ISSUER:

By: _____
Authorized Signature

EXHIBIT "A"
TO LETTER OF CREDIT

SIGHT DRAFT

Draft Number _____

\$ _____

At sight, pay to the order of [Name of Beneficiary to be inserted], the amount of USD
\$ _____ (_____ and 00/100ths U.S. Dollars).

Value received and charged to the account of: [Name of Issuer and address]. Drawn
under [Name of Issuer to be inserted] Standby Letter of Credit No. _____.

Dated: _____

[Public Service Company of Colorado]

By: _____
[name and title]

Account: [Applicant to be inserted]

EXHIBIT "B"
TO LETTER OF CREDIT

FORM OF TRANSFER REQUEST

Irrevocable Standby Letter of Credit No. _____

Current Beneficiary:

Applicant:

To: [Name of Issuer] ("Issuer")

The undersigned, as the current "Beneficiary" of the above-referenced Letter of Credit, hereby requests that you reissue the Letter of Credit in favor of the transferee named below [insert transferee name and address below]:

From and after the date this transfer request is delivered to Issuer, the transferee shall be the "Beneficiary" under the Letter of Credit for all purposes and shall be entitled to exercise and enjoy all of the rights, privileges and benefits thereof.

Dated: _____

[Public Service Company of Colorado]

By: _____

Name: _____

Title: _____

[Notary Acknowledgement]

To be signed by a person purporting to be an authorized representative of Beneficiary and indicating his or her title or other official capacity, and acknowledged by a notary public.

EXHIBIT E ILLUSTRATIVE FORM OF GUARANTY

GUARANTY

This Guaranty is executed and delivered as of this _____ day of _____, 20__ by _____, a _____ [corporation] ("Guarantor"), in favor of [Public Service Company of Colorado] ("Company"), in connection with the performance by _____, a _____ [limited liability company] ("Seller") of a Solar Generating and Battery Storage Energy Purchase Agreement dated _____, 20__ between Seller and Company (the "PPA").

- RECITALS -

A. Seller proposes to construct, own and operate a solar power electric generation and Battery Storage System having a Solar Nameplate Capacity of approximately _____ MW and a Battery Storage System Nameplate Capacity of approximately _____ MW located in _____ County, _____ (the "Facility").

B. Seller and Company have entered into the PPA for the purchase and sale of electrical energy from the Facility on the terms and conditions set forth therein.

C. Seller is controlled by Guarantor. Guarantor expects to derive substantial benefits from the performance of the PPA by Seller and Company. To induce Company to enter into and continue the PPA and to consummate the purchase and sale of electrical energy contemplated by the PPA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

- AGREEMENT -

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Company the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the PPA, whether incurred before or after the date of delivery of this Guaranty (the "Obligations"). This is a guaranty of payment, not of collection, and as such, Company shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty. This Guaranty shall survive termination of the PPA to the extent necessary to enforce and complete the rights, duties and obligations of Company and Seller thereunder.

2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to _____ dollars (US\$_) plus costs of collection under Section 10 below.

3. Rights of Company. Guarantor hereby grants to Company, in Company's discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor's duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the PPA;

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

4. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the PPA has expired ("Default"), Guarantor shall immediately upon receipt of written demand by Company (a) perform or cause Seller to perform the Obligation in Default, and (b) pay, reimburse, and indemnify Company against any liabilities, damages, and related costs (including attorneys' fees) incurred by Company as a result thereof, all in such manner and at such times as Company may reasonably direct.

5. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

6. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by Company.

7. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 4 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;

(b) any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;

(c) any defense based upon an election of remedies by Company;

(d) any duty of Company to protect or not impair any security for the Obligations;

(e) the benefit of any laws limiting the liability of a surety;

(f) any duty of Company to disclose to Guarantor any facts concerning Seller, the PPA or the Facility, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Company, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and

(g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, Company.

8. Cumulative Remedies. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.

9. Representations and Warranties. Guarantor represents and warrants to Company as follows:

(a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Seller is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and

binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

10. Collection Costs. Guarantor shall pay to Company, upon demand, and in addition to the maximum liability set forth in Section 2 hereof, all reasonable attorneys' fees and other expenses which Company may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by Company in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Company of its rights and remedies hereunder.

11. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

12. Waiver or Amendment. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company.

13. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of Company and Guarantor.

14. Governing Law. This Guaranty shall be governed by and construed in accordance with the law of the State of [*insert home state of Company*] without regard to the principles of conflicts of law thereof. Venue for any dispute hereunder shall be as set forth in Section 13.5 of the PPA.

15. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the PPA, addressed as follows:

(a) if to Company: as provided in the PPA

(b) if to Guarantor: _____

Attn:

with a copy to: _____

Attn:

EXHIBIT F

NOTICES AND CONTACT INFORMATION