

# COMMUNITY SOLAR SUBSCRIPTION AGREEMENT

## AUSTIN UTILITIES SOLARCHOICE PROGRAM

This Community Solar Subscription Agreement (this “Agreement”) is made and entered into as of \_\_\_\_\_, 20\_\_, by and between Austin Utilities (“Utility”), whose mailing address is 1908 14<sup>th</sup> St. NE Austin, MN 55912, and the customer identified as follows (“Customer”):

Customer Name: \_\_\_\_\_

Service Address: \_\_\_\_\_

Account Number: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

### 1. **Community Solar Participation.**

(a) Utility’s wholesale supplier, Southern Minnesota Municipal Power Agency (“SMMPA”), of which Utility is a member, has contracted with the owner of the Lemond Solar Center, with a nameplate capacity of five megawatts (5 MW) located in Owatonna, Minnesota (the “Lemond Solar Center”), and may contract with the owner of a new three megawatt (3 MW) solar facility to be constructed in Princeton, MN (the “Princeton Solar Center” and, together with the Lemond Solar Center, the “Community Solar Centers”) for all of the output of the Community Solar Centers, which is then made available to Utility pursuant to Utility’s Power Sales Contract with SMMPA.

Customer hereby purchases, and Utility hereby agrees to provide to Customer on its bills for the Service Address noted above (the “Service Address”), production credits (“Production Credits”) associated with \_\_\_\_ Production Units (as defined below) allocated as provided in Section 4 below to a portion of the capacity of a Community Solar Center. Customer acknowledges and agrees that the Production Credits shall initially be for capacity at the Lemond Solar Center but that Utility may, at its option and in its sole discretion, substitute such capacity for capacity at the Princeton Solar Center.

(b) For purposes of this Agreement, the terms below have the following meanings:

“**Customer Allocated Capacity**” means the number of Production Units multiplied by 335 watts.

**“Environmental Attributes”** means any and all rights, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the environmental or renewable characteristics or attributes of the Solar Energy Supply or the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water, in each case whether now existing or recognized or hereafter created or recognized.

**“Production Unit”** means 335 watts of capacity (which is equal to one panel and is estimated to produce approximately 515 kWh in the first year, with an estimated average of 485 kWh per year over the 25-year expected life of the panel).

2. **Term.**

This Agreement shall be effective on the date of execution, or on the in-service date of the solar panels, whichever date comes first and shall continue until the sixth or twelfth anniversary, as applicable based on Customer’s selection in Section 3(a) (the **“Term”**), subject to early termination or transfer as provided in this Agreement. This Agreement shall terminate in the event Customer no longer has an account at the Service Address listed in this Agreement and has not, within 90 days after such discontinuance, assigned the Agreement in accordance with the provisions of Section 6. This Agreement shall also terminate in the event Customer is the subject of a petition, voluntary or involuntary, for dissolution, bankruptcy or receivership under the United States Bankruptcy Code, or any state law, including the appointment of a receiver or assignment for the benefit of creditors, and said petition or appointment is not terminated within sixty (60) days of commencement.

3. **Consideration.**

(a) As consideration for Customer’s right to receive Production Credits pursuant to this Agreement, Customer will pay to Utility upon execution and return of this Agreement according to one of the following selections:

- Six Year Term:** the sum of \$\_\_\_\_\_ based on \_\_\_\_ Production Units at \$340.00 per Production Unit.
- Six Year Term (Financed):** the sum of \$\_\_\_\_\_ based on \_\_\_\_ Production Units at \$340.00 per Production Unit. Customer agrees to pay for subscribed Production Units in 12 equal, monthly payments applied to their bill. Customer agrees to pay Utility at the time Agreement is submitted an administration charge of \$25.00 per Production Unit.
- Twelve Year Term:** the sum of \$\_\_\_\_\_ based on \_\_\_\_ Production Units at \$660.00 per Production Unit.

- **Twelve Year Term (Financed):** the sum of \$\_\_\_\_\_ based on \_\_\_\_ Production Units at \$660.00 per Production Unit. Customer agrees to pay for subscribed Production Units in 12 equal, monthly payments applied to their bill. Customer agrees to pay Utility at the time Agreement is submitted an administration charge of \$25.00 per Production Unit.

(b) In the event Customer elects a financed term as indicated in Section 3(a), and Customer defaults on making payment to Utility for Production Unit subscription, Utility will discontinue applying Production Credit to the Customer's monthly bill immediately.

4. **Solar Energy Credit.**

(a) During the Term, Customer will receive a Production Credit for Customer's Allocated Capacity (calculated as provided below) as a kWh credit on the monthly invoices for electric service provided by Utility to the Service Address. The Production Credit will be applied to offset the kWh energy charge on each monthly invoice. The subscribed number of panels will be limited to 75% of the Customer average monthly consumption for the preceding 12 months.

(b) The Production Credit for Customer's Allocated Capacity will be determined by dividing the total actual monthly kWh energy production of the applicable Community Solar Center in the prior month by the total number of Production Units. The resulting amount will be the Production Credit in kWh allocated per Production Unit.

(c) In the event Production Credit exceeds Customer's net electric consumption in kWh for a rolling 12 month period, Utility will make a payment by check payable to Customer for any and all Production Credit in excess of consumption at a rate equal to the then current applicable retail rate.

5. **Tax Incentives.**

The owners of the Community Solar Centers shall retain the investment tax credits, production tax credits or other tax credits and incentives relating to the ownership of the Community Solar Centers. Utility makes no representations or warranties to Customer regarding the availability of any tax incentives to Customer. Customer is encouraged to contact his, her or their personal tax professional for advice and guidance before entering into this Agreement.

6. **Transfer and Assignment.**

(a) Customer may, with the prior written consent of Utility, (i) change the Service Address for which the Production Credits will apply to another Service Address within Utility's service territory for which Customer is obligated to pay Utility for electric service, or (ii) assign this Agreement to another individual or entity provided such

assignee's Service Address is located within Utility's service territory, pursuant to a Transfer and Assignment Agreement in the form attached hereto as Appendix A. Customer must request Utility's consent of any such proposed change or assignment in writing at least 30 days prior to the proposed effective date of such change or assignment.

(b) Utility's determination as to whether to consent to any proposed change of Service Address or assignment of this Agreement shall be made in accordance with the then current Utility SolarChoice program policies as established by Utility's board of directors from time to time.

(c) Except as provided above in this Section 6, Customer may not assign, gift, bequeath or otherwise transfer any of its rights or obligations under this Agreement to any other individual or entity for any purpose, including without limitation as security for any debt or obligation. Any attempted assignment in violation of this Section 6 shall be null and void.

7. **Miscellaneous Provisions.**

(a) **Environmental Attributes.** Customer acknowledges and agrees that SMMPA will acquire under power purchase agreements all electric energy generated by, and capacity of, the Community Solar Centers (the "Solar Energy Supply") and all Environmental Attributes associated with such electric energy, and resell the electric energy to Utility. Customer acknowledges that all Environmental Attributes associated with the Solar Energy Supply shall remain the property of SMMPA and Customer agrees not to make any statement contrary to such ownership.

(b) **Subscriber Eligibility.** Customer will not be eligible to subscribe to the SolarChoice Program if they are a current Distributed Generation (DG) Customer of Utility, and have a renewable resource connected at their residence or place of business. Utility restricts dual-participation as both a DG and SolarChoice Customer. In the event a SolarChoice Customer desired to install a resource and become a DG Customer, this Agreement will be terminated.

(c) **Access; Ownership.** Customer will not have access to either Community Solar Center for any purpose. Customer will have no ownership, possession right or control of either Community Solar Center or the Solar Energy Supply, and will have no rights or obligations with respect to the maintenance or operation of the Community Solar Centers. This Agreement does not convey to Customer any right, title or interest in or to any portion of any property (tangible or intangible, real or personal) underlying or comprising any portion of the Community Solar Centers.

(d) **No Reliance.** Customer is not relying on any representation, warranty or promise with respect to the Utility SolarChoice program or the Community Solar Centers made by or on behalf of Utility. **CUSTOMER ACKNOWLEDGES AND AGREES**

**THAT NONE OF UTILITY, SMMPA OR THE OWNER OF EITHER COMMUNITY SOLAR PROGRAM IS PROVIDING ANY REPRESENTATION, WARRANTY, GUARANTY OR COMMITMENT WITH RESPECT TO (I) THE ACTUAL PRODUCTION FROM EITHER COMMUNITY SOLAR CENTER, IF ANY, (II) THE AMOUNT OF SOLAR ENERGY CREDIT, IF ANY, THAT WILL BE RECEIVED BY CUSTOMER PURSUANT TO SECTION 4 OF THIS AGREEMENT, OR (III) THE AMOUNT OF ANY COST SAVINGS, IF ANY, CUSTOMER MAY REALIZE BY PARTICIPATING IN THE SOLARCHOICE PROGRAM. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE COMMUNITY SOLAR CENTERS ARE BEING USED IN THE UTILITY SOLARCHOICE PROGRAM ON AN AS IS, WHERE IS BASIS, AND WITHOUT WARRANTY, AND MAY FAIL TO PRODUCE OR DELIVER ANY ELECTRIC ENERGY, MAY DELIVER LESS ELECTRIC ENERGY THAN PROJECTED OR MAY HAVE A SHORTER THAN EXPECTED USEFUL LIFE. ANY WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

(e) **Force Majeure.** Except as specifically provided herein, if by reason of Force Majeure, a party is unable to carry out, either in whole or in part, any of its obligations herein contained, such party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing party, within a reasonable time after the occurrence of the Force Majeure event, gives the other party notice describing the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure event; (iii) no obligations of the non-performing party, which were to be performed prior to the occurrence causing the suspension of performance, shall be excused as a result of the occurrence; and (iv) the non-performing party shall use commercially reasonable efforts to remedy the cause(s) preventing it from carrying out its obligations. "Force Majeure" as used in this Agreement shall mean an event or circumstances beyond the commercially reasonable control of a party, which was not reasonably foreseeable and not resulting from the party's negligence, gross negligence or intentional acts, including but not limited to fire, acts of God, earthquake, flood or other casualty or accident; break down or failure of the Utility's electric distribution system; serial equipment defect; strikes or labor disputes; war, civil strife or other violence; and any law, order, proclamation, ordinance, action, demand or requirement of any government agency or utility. Force Majeure does not include the lack of funds, inability to make a payment or general change in the economy or particular markets.

(f) **No Change to Rate.** Nothing in this Agreement shall be deemed to alter or modify any rate, charge, term or condition of the electric service provided by Utility to Customer or to modify in any way Customer's rights and obligations as a customer of Utility. All of Utility's rates, charges, and terms and conditions of electric service shall remain subject to change in accordance with applicable law at any time.

(g) **Notices.** All notices, requests, consents, and other communications to a party required under this Agreement must be in writing, delivered to the mailing address for such party stated above, and will be deemed delivered upon the earlier of (i) three business days after being deposited in the U.S. mail, postage prepaid, or (ii) the following business day after being delivered to a reputable overnight courier service.

(h) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous proposals, whether oral or written, negotiations, representations, commitments, writings and all other communications between the parties. This Agreement may not be released, discharged, or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

(i) **Governing Law/Jurisdiction/Venue.** This Agreement shall be deemed to have been made in, and shall be construed under, the internal laws of the State of Minnesota, without regard to the principles of conflicts of laws thereof. The parties acknowledge and agree that a court of competent jurisdiction located in Mower County, Minnesota shall have exclusive jurisdiction in any action or proceeding arising under or relating to this Agreement.

(j) **Binding on Successors.** This Agreement shall be binding on the heirs, personal and legal representatives, successors and permitted assigns of the Customer.

a **Transfer upon Death.** This Agreement shall be transferred to the following individual in the event of Customer death.

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

(k) **Counterparts.** This Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**UTILITY:**

**CUSTOMER:**

**Austin Utilities**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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