EVgo Exhibit 1
Witness: Colin Murchie
Docket No.: 44280
Date: October 20, 2022

Colorado

Clear form

ELECTRIC VEHICLE COMMUNITY CHARGING HUB AND PUBLIC CHARGING

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

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

1. DEFINITIONS

- "Applicable Laws" means all applicable federal and state laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, and orders of any governmental entity having jurisdiction over the Program, the services set forth in this Agreement, the practices involved in the services set forth in this Agreement, or any work Xcel Energy or Customer performs relating to this Agreement.
- "Infrastructure Buyout Amount" means an amount equal to the EV Supply Infrastructure Costs reduced by ten percent (10%) for each full calendar year between the In-Service Date and the date of termination of the Agreement. By way of example only, if the Agreement is terminated eighteen (18) months after the In-Service Date, and Customer is required to pay the Infrastructure Buyout Amount in accordance with Section 5 of this Agreement, the Infrastructure Buyout Amount payable by Customer would be equal to ninety percent (90%) of the EV Supply Infrastructure Costs. In the event the Agreement is terminated by Customer under Section 5.1 or terminated by Xcel Energy for Customer's breach under Section 5.2.3 prior to the In-Service Date, the Infrastructure Buyout Amount shall equal the EV Supply Infrastructure Costs.
- "Calendar Days" means every day shown on the calendar, beginning and ending at midnight.
- "Charging Equipment" means the electric vehicle charging equipment installed at the Customer Location which is used to deliver electricity from the EV Supply Infrastructure to an electric vehicle. Charging Equipment includes the ungrounded, grounded, and equipment grounding conductors, the electric vehicle connectors, attachment plugs, and all other fittings, devices (including the charger), power outlets, or apparatuses associated with the installed device, but does not include EV Supply Infrastructure.
- "Customer Location" means
- "Dispute" means a disagreement between Xcel Energy and Customer that arises under, or that relates to, the Agreement.
- "EV Driver" means an individual who uses the Charging Equipment at the Customer Location to charge an Electric Vehicle.
- "EV Supply Infrastructure" means service panels, conduit, and wiring from the service connection to the charger stub. EV Supply Infrastructure does not include the line extension necessary to connect Xcel Energy's distribution system to the service connection and does not include the Charging Equipment.
- "EV Supply Infrastructure Costs" means the total costs and expenditures incurred by Xcel Energy to procure, design, construct, and install the EV Supply Infrastructure at the Customer Location, including but not limited to costs of labor, labor loading, materials, transportation, overhead, indirect allocated costs, any allowance for funds used during construction ("AFUDC"), and any other capital related expenditures.
- "Facilities" means any privately, publicly, or cooperatively owned line, system, and/or other utility item that produces, transmits, or distributes communications, power, cable, television, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, signal systems, and other products or services that serve the public, and/or a privately-owned irrigation system. Any necessary appurtenances to each Facility are considered a part of the Facility.
- "Force Majeure Event" means fire, flood, explosion, catastrophe, accident, declared war, riot, act of God, act of terrorism, insurrection, strike, and Applicable Laws that prevent performance, to the extent (i) such event is beyond a Party's control, that due diligence and use of reasonable efforts by the Party claiming the Force Majeure Event could not have avoided or prevented, (ii) that materially and adversely affects a Party's ability to meet its obligations under this Agreement, and (iii) the Party claiming the Force Majeure Event gives prompt written notice of the same to the other Party. A Force Majeure Event does not include events due to the acts or omissions of the Party claiming the Force Majeure Event.
- "In-Service Date" means the date the EV Supply Infrastructure has been completed for the specific Customer Location and is ready for Customer to use, if Customer chooses to procure its own Charging Equipment. Following the installation and testing of the EV Supply Infrastructure at the Customer Location, the Parties will mutually agree upon and document the In-Service Date applicable to the Customer Location.
- "Program" means the Xcel Energy Community Charging Hub and Public Charging Electric Vehicle Supply Infrastructure Program under which Xcel Energy will procure, install and maintain EV Supply Infrastructure to support EV charging by EV Drivers at the Customer Location.
- "Working Days" means any Calendar Day, excluding Saturdays, Sundays, and legal public holidays, as set forth in 5 U.S.C. § 6103(a).

2. ELIGIBILITY AND AVAILABILITY

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

2.1.1 Qualify as a non-residential electric customer of Xcel Energy in Colorado;

2.1.2 Own or lease the Customer Location, or be Xcel Energy's customer of record associated with the premise's electric service meter at the Customer Location;

2.1.3 Provide express written consent, in a form acceptable to Xcel Energy in its sole discretion, from the owner of the Customer Location to grant Xcel Energy the appropriate real property rights and continuous access to EV Supply Infrastructure and Optional Charging Equipment, as applicable, installed, owned, and maintained by Xcel Energy, including an easement signed by the owner of the Customer Location, in the form attached hereto as Exhibit A;

2.1.4 Customer must own, lease or operate EV Charging or shared electric mobility charging (e.g. e-bikes or scooters) at the Customer Location;

2.1.5 Commit to installing a minimum of four (4) charging ports per Customer Location or, in cases with fewer than four ports, a minimum of 50 kW of charging capacity;

2.1.6 During the Term, agree to take electric service to the Charging Equipment on one of Xcel Energy's published Commercial rates for which Customer is eligible;

2.1.7 All Charging Equipment electric load will be separately metered from any other load served at the Customer Location;

2.1.8 Provide proof, acceptable to Xcel Energy in its sole determination, that Customer has purchased, or will purchase as required by this Agreement and has the ability, financial, technical, or otherwise, to install Charging Equipment from Xcel Energy's pre-qualified Charging Equipment list The Charging Equipment on this list meets Xcel Energy's technical and safety standards, demonstrates interoperability, cyber security, and smart charging capabilities that enable Customer to participate in managed charging rates or programs;

2.1.9 Provide proof, acceptable to Xcel Energy in its sole determination, that Customer can provide demonstrated support of its ability to utilize the EV Supply Infrastructure within six (6) months of its In-Service Date; and

2.1.10 Acknowledgement that Customer may be required to take electric service to the Charging Equipment through a specified rate schedule (e.g., a time-varying rate) if Xcel Energy-owned EV Supply Infrastructure becomes subject to such a requirement as a result of a Colorado Public Utilities Commission ("Commission") or other legal proceeding, Commission rule, Colorado legislation, or other Applicable Laws.

2.2 To be eligible to receive EV Supply Infrastructure, Customer must also provide documentation acceptable to Xcel Energy evidencing that the Customer Location meets the following requirements (the "Customer Location Requirements"):

2.2.1 Be located in Xcel Energy's electric service territory;

2.2.2 Meet Xcel Energy's minimum safety, accessibility, convenience, and reliability requirements;

2.2.3 Be able to provide a location acceptable to Xcel Energy, in Xcel Energy's sole determination, to deploy Charging Equipment in a cost-effective manner, based on factors such as proximity to transformers, length of trenching, available transmission and distribution capacity, and ease of access for EV Drivers, as determined by Xcel Energy in its sole discretion; and

3. CUSTOMER RESPONSIBILITIES

3.1 Except for the costs incurred by Xcel Energy to undertake the responsibilities set forth in Section 4 of this Agreement, Customer will pay all other costs associated with this Agreement.

3.2 Customer must purchase and install Charging Equipment connection with the Program in accordance with the requirements set forth in this Agreement.

3.3 Customer will comply with Xcel Energy's safety and technical specifications.

3.4 Customer will assist in coordinating installation and maintenance of the EV Supply Infrastructure at the Customer Location with Xcel Energy and its contractor(s), including any applicable Charging Equipment manufacturers, vendors, or subcontractors, who provide services in connection with installing and maintaining the EV Supply Infrastructure. This will include issuing or obtaining any necessary license and right to allow Xcel Energy and its contractor(s) access to the Customer Location for the installation and maintenance of the EV Supply Infrastructure. Customer will also meet regularly with Xcel Energy to review and coordinate time schedules and track EV Supply Infrastructure and Charging Equipment installation status.

3.5 Customer will identify and be responsible for the procurement of all necessary Charging Equipment for the Program at the Customer Location that meet the Customer Requirements within ninety (90) Calendar Days of the Effective Date, and shall provide proof of such purchase to Xcel Energy. Failure to identify the Charging Equipment for the Customer Location and provide proof of purchase of such Charging Equipment within ninety (90) Calendar Days after the Effective Date will void any of Xcel Energy's obligations under Section 4 of this Agreement, and Xcel Energy may terminate, in its sole discretion, this Agreement immediately upon written notice to Customer in the event of such failure.

3.6 Customer will provide Xcel Energy with accurate and complete information in order to permit Xcel Energy to successfully install and complete the EV Supply Infrastructure for the Program. Customer consents to and permits Xcel Energy through its contractor(s), including any applicable Charging Equipment manufacturers, vendors, and subcontractors, who provided services in connection with installing and maintaining the EV Supply Infrastructure and Charging Equipment, as applicable, to have remote access in order to access, collect, and share data from the Charging Equipment with respect to charging activity, vehicle usage, and technical performance (the "Data") during the Term of this Agreement for purposes of reporting, managing and administering the Program. Xcel Energy shall only receive Data from such contractors on an anonymized and aggregated basis. Xcel Energy may disclose or use any Data, information, or documents it receives from Customer in any manner consistent with Commission data privacy requirements, including in connection with any legal or regulatory proceeding. If Xcel Energy is unable to collect Data through remote access to the Charging Equipment, if requested by Xcel Energy, Customer shall collect and provide on a quarterly basis that following Data:

a. Start and stop times of charges;

b. Peak kW per charging session;

c. Number of charging sessions daily;

d. Amount of time each EV is actually charging per session;

e. Whether Customer is providing charging for free or if there is a usage fee to the EV Driver;

f. Operating costs including non-energy related; and

g. Any technologies being used to manage demand.

3.7 Customer will pay for power consumed by the EV Supply Infrastructure and dispensed from the Charging Equipment under Customer's applicable Xcel Energy service rate schedule. If at any point during the Term, Xcel Energy-owned EV supply infrastructure becomes subject to a specified service rate schedule (e.g., a time-varying rate schedule) as a result of a Commission proceeding, Commission rule, or Colorado legislation, Customer shall switch to the specified service rate schedule for the remainder of the Term, and

Customer shall pay for power consumed by the EV Supply Infrastructure and/or dispensed from the Charging Equipment under such rate schedule upon the effective date of this requirement.

3.8 Within six (6) months of the In-Service Date, Customer must install the Charging Equipment at the Customer Location sufficient to fully utilize the EV Supply Infrastructure.

3.9 After installation of both the Charging Equipment and EV Supply Infrastructure is completed, Customer will operate and maintain the Charging Equipment installed by Customer at the Customer Location for the Term of this Agreement and guarantees the safe and reliable operation of the Charging Equipment installed by Customer in accordance with Applicable Laws. During the Term, Customer grants Xcel Energy and its officers, agents, representatives, employees, and contractors a right of ingress, egress, and physical disturbance to the Customer Location on a seven (7) day, twenty-four (24) hour per day basis as required to construct, install, maintain, operate, repair, and remove EV Supply Infrastructure and Optional Charging Equipment, as applicable, in accordance with the provisions of this Agreement. The general manner of such ingress and egress is subject to coordination with Customer.

3.10 After installation of both the Charging Equipment and EV Supply Infrastructure is completed, Customer will make the Charging Equipment at Customer Location available to EV Driver for EV charging twenty-four (24) hours each day, seven (7) days each week, except at times when the Charging Equipment or EV Supply Infrastructure fails to operate or otherwise requires repair. Customer guarantees the Charging Equipment at Customer Location will be in full working order and available for EV charging at least 95 percent of the time annually.

3.11 Customer will promptly notify Xcel Energy in the event Customer becomes aware that the Charging Equipment or EV Supply Infrastructure fails to operate or otherwise requires repair.

3.12 In the case of total equipment failure of all or a portion of the EV Supply Infrastructure that is not caused by Xcel Energy or its employees, agents, or contractors, and not covered by a manufacturer's warranty, Customer may either request that Xcel Energy replace the necessary equipment at Customer's expense or terminate this Agreement pursuant to Section 5.1 and pay Xcel Energy the Infrastructure Buyout Amount as set forth in Section 5.3.

3.13 Customer will maintain the area surrounding the EV Supply Infrastructure and Charging Equipment, including but not limited to, pavement maintenance, pruning of vegetation, snow removal, and the repair of security lighting.

3.14 Customer may remedy minor issues with the EV Supply Infrastructure that do not require qualified technicians to address, such as resetting infrequently tripped circuit breakers.

3.15 Customer will fund the customer contribution required for the line extension necessary to connect the EV Supply Infrastructure with Xcel Energy's electric distribution system as provided in Xcel Energy's Distribution Extension Policy as set forth in its Colorado electric tariff. Customer is also responsible for the cost to complete any other upgrades necessary for the use of the EV Supply Infrastructure.

3.16 It is Customer's responsibility to maintain the Charging Equipment.

4. XCEL ENERGY RESPONSIBILITIES

4.1 Xcel Energy and/or qualified and competent contractors hired by Xcel Energy will prepare construction drawings ("Construction Drawings") for the EV Supply Infrastructure at location(s) within the Customer Location determined by Customer in coordination with Xcel Energy. The Construction Drawings will show the proposed EV Supply Infrastructure and its location(s) within the Customer Location. Prior to Xcel Energy commencing construction of the EV Supply Infrastructure, Customer must approve the Construction Drawings. Once approved, the Construction Drawings may be modified only with the mutual consent of both Parties.

4.2 Xcel Energy will prepare and coordinate the EV Supply Infrastructure installation schedule ("Installation Schedule") with designated Customer staff as to minimize disruption to Customer's operations. Xcel Energy will also meet regularly with Customer staff to review and coordinate time schedules and track EV Supply Infrastructure and Charging Equipment installation status. Prior to Xcel Energy commencing construction of the EV Supply Infrastructure, Customer must approve the Installation Schedule. Once approved, the Installation Schedule may be modified only with the mutual consent of both Parties.

4.3 Xcel Energy will install the EV Supply Infrastructure pursuant to the Installation Schedule and consistent with the Construction Drawings in a good and workmanlike manner, with qualified and competent contractors, in compliance with all applicable codes and engineering standards, and in compliance with all Applicable Laws.

4.4 Except as otherwise provided in this Agreement, Xcel Energy will retain title and ownership of the EV Supply Infrastructure once installation and commissioning are completed. Customer shall acquire no right, title, or interest in any portion of the work performed by Xcel Energy or Xcel Energy's equipment, EV Supply Infrastructure or Facilities unless transferred to Customer under the provisions in Section 5. The work constructed and installed by Xcel Energy shall be and remain the personal property of Xcel Energy, shall not be considered a fixture of the property, shall not attach to the realty, and shall not be alienable or lienable by Customer or any third party for the Term of this Agreement, and Customer shall not allow lien claims, third-party interest, or any encumbrances to be placed on the work, EV Supply Infrastructure. Xcel Energy shall not permit any mechanics' or other liens to be placed on Customer property during the Term of this Agreement caused by or resulting from any work performed, materials, or supplies furnished by or at the request of Xcel Energy or its contractors.

4.5 Xcel Energy shall own, operate, and maintain, at its own expense, the EV Supply Infrastructure at the Customer Location for the Term of this Agreement, unless terminated earlier as provided herein. Xcel Energy may engage one or more third-party contractors to complete its obligations under this Agreement. Xcel Energy shall not knowingly award contracts to contractors who have been or are suspended or debarred by the State of Colorado or the United States. Xcel Energy shall be responsible for supervising any third-party contractor it chooses to retain.

4.6 After installation of, and while Xcel Energy owns, the EV Supply Infrastructure, Xcel Energy shall conduct emergency repairs on the EV Supply Infrastructure on an as needed basis in accordance with the following:

4.6.1 Requests for emergency repairs can be made by Customer or Xcel Energy staff.

4.6.2 Customer's requests for repair shall be made via telephone, email, or text message to an agreed-upon representative at Xcel Energy.

4.6.3 All emergency repairs shall be completed by qualified technicians selected by Xcel Energy.

4.6.4 Emergency repair service calls shall begin with inspection of malfunctioning EV Supply Infrastructure, a diagnosis of the potential issue, and an expected time required for repair.

4.6.5 Xcel Energy shall use commercially reasonable efforts to repair the EV Supply Infrastructure, in a timely manner.

4.7 After installation of, and while Xcel Energy owns the EV Supply Infrastructure, Xcel Energy may inspect the EV Supply Infrastructure at the Customer Location for general wear or malfunction on a periodic basis as determined by Xcel Energy. Such inspection may include but is not limited to the following:

4.7.1 Xcel Energy shall have the right, but not the obligation, to inspect the Charging Equipment for initial and ongoing integration with the EV Supply Infrastructure.

4.7.2 If periodic inspections reveal failure of EV Supply Infrastructure, Xcel Energy shall request on-site technical services for inspection, diagnosis, and emergency repair as set forth in Section 4.6.

4.8 Xcel Energy shall be responsible for the cost of purchasing and installing the EV Supply Infrastructure. Xcel Energy shall also be responsible for all costs that Xcel Energy, in its sole discretion, deems reasonably required for operating and maintaining the EV Supply Infrastructure (except Customer shall pay for all power consumed by the EV Supply Infrastructure and/or dispensed from the Charging Equipment). All payments for this EV Supply Infrastructure will be made directly by Xcel Energy to the third-party contractor retained to complete the work, and Xcel Energy will have no financial obligation for any payments to Customer.

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

5. TERM AND TERMINATION

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

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

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

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

5.2.3. If Xcel Energy terminates pursuant to this Section 5.2 for Customer's material breach of the Agreement, Customer shall pay the Infrastructure Buyout Amount, and when such fee is paid, Xcel Energy shall transfer title of all EV Supply Infrastructure to Customer on an "AS IS" basis, without any warranty (express or implied).

5.2.4. A Party terminating this Agreement pursuant to this Section 5.2 does not waive its rights to any remedy at law or in equity for a material breach of the Agreement.

5.3 Should (a) Customer terminate this Agreement for any reason other than pursuant to the provisions of Section 5.2.2 for Xcel Energy's material breach of its obligations hereunder, or (b) Xcel Energy terminate this Agreement pursuant to the provisions of Section 5.2.3 for Customer's material breach of its obligations hereunder, Customer will be charged and Customer will pay to Xcel Energy the Infrastructure Buyout Amount. The Infrastructure Buyout Amount, if applicable, will be due and payable by Customer thirty (30) days following the termination of the Agreement. Upon payment of the Infrastructure Buyout Amount, Xcel Energy will transfer title of the EV Supply Infrastructure to Customer on an "AS IS" basis, without any warranty (express or implied).

5.4 At least one hundred and eighty (180) Calendar Days prior to the end of the Term of this Agreement, the Parties shall endeavor to negotiate a mutually agreeable plan for the EV Supply Infrastructure that will commence at the end of the Term of this Agreement, including but not limited to the following:

5.4.1 Extension of the Term of this Agreement for a mutually agreed period of time;

5.4.2 Upon expiration of the Term, Xcel Energy transfers the title to the EV Supply Infrastructure to Customer in "AS IS" condition, without any warranties (express or implied) by Xcel Energy; or

5.4.3 Upon expiration of the Term, Xcel Energy removes, at Customer's expense, the portion of the EV Supply Infrastructure that is above ground, restoring the Customer Location to original conditions or any other conditions agreed upon by the Parties, and Xcel Energy shall transfer title of the remaining portion of the EV Supply Infrastructure that is not above ground to Customer, without any payment from Customer, and the Remaining EV Supply Infrastructure will be deemed abandoned in place in "AS IS" condition, without any warranty (express or implied) by Xcel Energy.

5.5 If, at the end of the Term of the Agreement, the Parties have not come to a mutual agreement pursuant to Section 5.4 above, the Term of the Agreement shall continue until the Parties are able to come to a mutual agreement or until either Party unilaterally terminates the Agreement pursuant to Section 5.1.

5.6 Upon termination or expiration of the Agreement, to the extent Customer takes ownership of the EV Supply Infrastructure, Customer assumes the responsibility of maintaining the EV Supply Infrastructure, and in order to continue receiving electric service, Customer must take electric service pursuant to a tariff for which the Customer is then eligible.

6. WARRANTIES, INDEMNIFICATION, AND LIMITATION OF LIABILITY

6.1 Customer represents and warrants that: (i) the execution, delivery, and performance of the Agreement has been duly authorized by all requisite action on the part of Customer, and Customer has full power and authority to grant the rights and licenses granted by the Agreement to Xcel Energy, including but not limited to the rights and licenses set forth in this Agreement; (ii) this Agreement constitutes the legal, valid, and binding obligation of Customer; (iii) Customer is and will remain duly licensed, authorized or qualified to do business, and in good standing; and (iv) Customer is and will remain in compliance with all Applicable Laws applicable to Customer in connection with performance under this Agreement.

6.2 Xcel Energy, itself or through its contractor(s), shall perform the installation of the EV Supply Infrastructure in a safe and professional manner in accordance with all Applicable Laws. **EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6.2, XCEL ENERGY MAKES OR PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AGAINST INFRINGEMENT, WITH RESPECT TO THE WORK TO BE PERFORMED, SERVICES TO BE PROVIDED, OR EV SUPPLY INFRASTRUCTURE TO BE DELIVERED UNDER THIS AGREEMENT. IN THE EVENT TITLE TO EV SUPPLY INFRASTRUCTURE IS TRANSFERRED TO CUSTOMER IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, THE EV SUPPLY INFRASTRUCTURE IS PROVIDED "AS IS" AND WITH**

NO WARRANTY OF ANY KIND. XCEL ENERGY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.3 **IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL XCEL ENERGY BE LIABLE TO CUSTOMER AND ITS AGENTS, EV DRIVERS, CONTRACTORS AND EMPLOYEES, FOR SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE.**

6.4 Subject to the limitations contained in this Agreement, each Party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by Applicable Laws and shall not be responsible for the acts of the other Party and the results thereof. Notwithstanding the foregoing, to the fullest extent allowed by Applicable Laws, Customer shall, at its own expense, defend, indemnify, and hold Xcel Energy harmless from and against any claims, lawsuits, liability, losses, damages, or expenses (including attorney's fees) arising out of, resulting from, or in any way connected with the: (i) the Charging Equipment; (ii) breach of any warranty set forth in Section 6.1; (iii) Customer's, or its employees', agents', contractors', or EV Driver's negligent acts or omissions or willful misconduct; or (iv) the breach of Section 3.6.

6.5 In no event will Xcel Energy be liable to Customer for any claims, expenses, losses, damages, or lawsuits arising out of any interruptions or disturbances in electric service. Except as described in this section, Xcel Energy's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement, or from performance or breach thereof, shall in no case exceed the total dollar amount for the specific work giving rise to the claim.

7. GENERAL TERMS

7.1 *No Third-Party Beneficiary.* This Agreement is between the Parties and creates no third-party beneficiaries. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise, to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

7.2 *Assignment Prohibited.* Customer shall not assign the Agreement, or any part thereof, nor delegate in whole or in part, its responsibilities hereunder, without the prior written consent of Xcel Energy. Unless otherwise agreed to in writing by Xcel Energy, no assignment will release or discharge Customer from any obligations under the Agreement. Any prohibited assignment or delegation shall be null and void.

7.3 *Legal Compliance.* The Parties shall comply with all Applicable Laws. Each Party shall monitor its agents, contractors, and employees for the purposes of ensuring compliance with all Applicable Laws. If any change in circumstances or law will affect a Party's performance under this Agreement, that Party shall notify the other Party of the change in circumstances or law at the earliest reasonable opportunity, and the Parties will negotiate in good faith to modify the Agreement to take into account the changed circumstance or law.

7.4 *Dispute Resolution.* In the event of any Dispute arising out of or relating to this Agreement, the complaining Party shall provide written notice of the Dispute to the other Party. The Dispute notice shall describe the facts surrounding the Dispute in sufficient detail to apprise the other Party of the nature of the Dispute.

Xcel Energy and Customer shall attempt in good faith to settle all Disputes through the negotiation process set forth in this Section. To this effect, unless otherwise agreed, Xcel Energy and Customer shall conduct at least one face-to-face meeting between the designated representatives from both Parties in an attempt to reach a solution that is satisfactory to both Xcel Energy and Customer. Such a meeting shall take place within seven (7) Calendar Days following delivery of a Dispute notice. If that meeting does not resolve the Dispute, Xcel Energy and Customer shall have executive level leadership from both Parties meet and attempt to resolve the Dispute.

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

7.5 *Applicable Law and Venue.* This Agreement shall be interpreted in accordance with the laws of the State of Colorado. Venue for all legal proceedings arising out of or relating to this Agreement or breach thereof shall be in the state or federal court with competent jurisdiction in Denver County, Colorado.

7.6 *Non-Waiver.* The failure of either Party at any time to insist upon the strict performance of any or all of the terms, conditions, and covenants in this Agreement shall not be deemed a waiver by that Party of any subsequent breach or default in the said terms, conditions, or covenants by the other Party.

7.7 Complete Agreement. This Agreement constitutes the complete and exclusive understanding of the Parties concerning its subject matter. This Agreement supersedes all prior agreements, representations, understandings, and communications, written or oral, between the Parties as to the subject matter of this Agreement.

7.8 *Amendments.* The terms of this Agreement may be changed, amended or modified only by mutual signed agreement of the Parties.

7.9 *Consent to Disclose.* Customer consents to Xcel Energy's disclosure of the existence, terms, and status of this Agreement consistent with Commission data privacy requirements. Customer further acknowledges that pursuant to Section 3 of this Agreement, Xcel Energy may disclose any information and documents Customer provides to Xcel Energy pursuant to this Agreement. Customer also consents to Xcel Energy's disclosure of any information concerning the EV Supply Infrastructure and related services provided to Customer that Xcel Energy has in its possession, including "customer data" as defined by Commission rules, to address Xcel Energy's reporting requirements in Commission proceedings, including without limitation those established in Proceeding No. 20A-0204E. To the extent the Commission requires any additional written consent from Customer for disclosure of such information, Customer agrees to cooperate with any such request by Xcel Energy. Without limiting the foregoing, by signing this Agreement and participating in the Program, the Customer consents and authorizes Xcel Energy to provide the Customer's information related to the Agreement or the Program to third parties, including but not limited to the Colorado Energy Office and the Regional Air Quality Council, for the purpose of administering the Program, coordinating with other third parties offering EV programs and ensuring that Program participants are not receiving funding multiple times for the same equipment and/or costs.

7.10 *Property of Xcel Energy.* All reports, drawings, plans, specifications, calculations, studies, software programs, tapes, models, and memoranda, if any, assembled or prepared by Xcel Energy or Xcel Energy's affiliates, independent professional associates, agents, consultants, contractors, or subcontractors pursuant to this Agreement are instruments of service in respect of the Agreement, and Xcel Energy shall retain all ownership and property interest therein. Customer may make and retain copies for information and reference in connection with the Program, provided, however, that it is understood and agreed that such documents are not intended to be re-used by Customer or others on extensions of the Program or on any other project or for any other purpose other than as expressly set forth in this Agreement, and Customer shall not re-use or disclose to any third party all or any portion of such work product without the express prior written consent of Xcel Energy, which consent shall not be unreasonably withheld.

7.11 *Force Majeure*. If a Party's performance is delayed or hindered by a Force Majeure Event, such Party is excused from such performance for the period of delay, provided that the Party claiming a Force Majeure Event has notified the other Party of the delay as soon as is reasonably possible. In such event, the period for the performance shall be extended for the period of such delay.

7.12 The Parties are independent contractors. Nothing in this Agreement or in the activities contemplated by the Parties hereunder shall be deemed to create an agency, partnership, employment, or joint venture relationship between the Parties or any of their representatives. Neither Party is an agent of the other nor has the authority to represent the other as to any matters. Customer is responsible for the safety of its respective agents, employees, and other representatives. Xcel Energy in no way assumes any of the duties, obligations, or liabilities attributed to Customer under the Agreement.

7.13 Those provisions of this Agreement which would require that they survive termination of the Agreement in whole or part in order to give them full force and effect will survive the termination of the Agreement, regardless of the date, cause, or manner of the termination. Xcel Energy's right to retain any Data collected in connection with the Program shall survive termination. In addition, all rights of action arising from or related to the Agreement that accrue during the Term of the Agreement, and any remedies for such claims, both legal and equitable, will survive such termination.

7.14 *Branding and Consumer Education*. The Parties agree to discuss opportunities for Xcel Energy branding, Consumer outreach and education efforts related to the benefits of electric vehicles, and implementation of renewable energy in connection with the Program.

7.15 *Taxes on Sale of EV Supply Infrastructure*. If Xcel Energy sells the EV Supply Infrastructure to Customer for an amount equal to the Infrastructure Buyout Amount for such EV Supply Infrastructure and Customer purchases the same, then Xcel Energy will deliver to Customer a Bill of Sale with a purchase price equal to the Infrastructure Buyout Amount for such EV Supply Infrastructure. Customer further agrees that, in accordance with federal and state laws in effect at the time of the sale of the EV Supply Infrastructure from Xcel Energy to Customer: (i) Customer shall be responsible for and shall pay transfer taxes, either directly to a taxing authority or to Xcel Energy, as required by law, related to the Infrastructure Buyout Amount as stated on the Bill of Sale; and (ii) Xcel Energy agrees to complete a Form W-9 "Request for Taxpayer Identification Number and Certification" in the event of such sale.

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

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

Customer

Xcel Energy

evapplications@xcelenergy.com

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

7.18 Electronic Signature and Electronic Records. Both Parties consent to the use of electronic signatures. The Agreement and any other documents requiring signature hereunder may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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

Customer name_____

By, Signature_____ Date _____

Contact name _____

Title _____

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

By_____ Date _____

Name _____

Title _____

EXHIBIT A – FORM OF EASEMENT

After recording return to:
Public Service Company of Colorado
Attn: Manager, Siting and Land Rights
Right of Way and Permits Department
1123 West 3rd Avenue
Denver, Colorado 80223

Division_____ Row agent_____ Doc. no._____

Location _____ Description author _____ Plat/grid no._____

Author address _____ Wo/Jo/Creg no._____

ELECTRIC EASEMENT PUBLIC SERVICE COMPANY OF COLORADO
The undersigned Grantor hereby acknowledges receipt of good and valuable consideration from PUBLIC SERVICE COMPANY OF COLORADO (Company), 1800 Larimer Street, Attn: Right-of-Way and Permits Dept., Denver, Colorado, 80202, in consideration of which Grantor(s) hereby grants unto said Company, its successors and assigns, a non-exclusive easement ("Easement") for the transmission and distribution of electricity and related communication signals on, through, over, under, across, and along a course as said lines may be hereafter constructed in the following lands located in County of _____ , State of Colorado, the easement being described as follows ("**Easement Area**"):

See Exhibit A and Exhibit B attached hereto and incorporated herein by this reference.

The easement is _____ feet in width. The side boundary lines of the easement shall be lengthened and shortened as necessary to encompass a continuous strip of not less than the above width at all points on Grantor's property crossed by the above described easement and extending to the boundaries of adjacent properties.

Together with the right (i) to enter upon said premises, to survey, construct, install, operate, repair, remove, replace, reconstruct, alter, relocate, patrol, inspect, improve, enlarge, remove, maintain and use electric lines and related communication facilities, including towers, poles, and other supports; together with braces, guys, anchors, cross-arms, cables, conduits, wires, conductors, manholes, transformers, and other fixtures, devices, and appurtenances used or useful in connection therewith and all service panels, conduit, wiring, and associated fixtures and devices used or useful for the operation, service, and connection of electric vehicle charging equipment (collectively the "Facilities") and related fixtures and devices, and (ii) to remove objects interfering therewith, including the trimming or felling of trees and bushes, and together with the right to use so much of the adjoining premises of Grantor during surveying, construction, maintenance, repair, removal, or replacement of said Facilities and related fixtures and devices as may be required to permit the operation of standard utility construction or repair machinery.

The Grantor reserves the right to use and occupy the Easement Area for any purpose consistent with the rights and privileges above granted and which will not interfere with or endanger any of the said Company's Facilities therein or use thereof. Such reservations by Grantor shall in no event include the right to erect or cause to be erected any buildings or structures upon the easement granted or to locate any mobile home or trailer units thereon. No other objects shall be erected, placed, or permitted to remain on, under, or over the Easement Area, which will or may interfere with the Facilities installed on the Easement Area or interfere with the exercise of any of the rights herein granted. Grantor shall not, without the prior written approval of Company, alter the existing ground elevations or change the compaction of the soil on the Easement Area. No failure by Company to remove or otherwise raise an objection to any objects or improvements located or installed on the Easement Area by Grantor, shall be deemed to constitute consent on the part of Company to such improvements or objects, nor a waiver of Company's rights regarding removal of any such improvements or objects.

Grantor agrees to contact the Utility Notification Center of Colorado (1-800-922-1987), or any similar one-call utility line locator system which may replace or supplement it, at least four (4) business days (or such longer time if required by applicable law) prior to the commencement of construction or execution of the Easement Area to arrange for field locating of Facilities.

Grantor shall disclose to Company any waste materials that Grantor knows or reasonably suspects to be present in soils, water (surface or groundwater), vapors or air, whether on, in, above, migrating to, or under the Easement Area and any other information that would help Company assess the risks of working in the area. Grantor shall be responsible for any costs to manage, transport, or dispose of any waste materials that Company encounters during installation, relocation, or maintenance of the Facilities in the Easement Area. Company shall not assume, and Grantor shall retain its obligation to comply with all applicable environmental laws and regulations, including federal or state reporting requirements related to such waste materials.

In case of the permanent abandonment of the easement, all right, privilege, and interest granted shall terminate.

The work of installing and maintaining said lines and fixtures shall be done with care; the surface along the easement shall be restored substantially to its original level and condition.

The provisions of this Easement shall run with, be binding on and burden the Easement Area and shall bind and benefit the heirs, executors, administrators, personal representatives, successors, and assigns of Grantor and Company. The term "Grantor" includes the singular, plural, feminine, masculine and neuter.

Grantor warrants and represents that Grantor is the owner of the easement and has the right to sell, transfer, convey, confirm and grant this easement and the rights contained herein. This Easement is binding on Grantor, is not

conditioned upon obtaining the consent of any third party, and is not subject to any mortgages or liens, except those for which Grantor has provided Grantee with a consent and subordination agreement, executed by such mortgagee or lienholder and attached hereto.

This Easement incorporates all agreements between the parties as to the subject matter of this Easement, and no prior representations or statements, verbal or written, shall modify, supplement or change the terms of this Easement. This Easement consists of the document entitled "Electric Easement", and Exhibit(s) containing a legal description and a sketch depicting the legal description, if referenced above or attached hereto, and if attached hereto, a Consent and Subordination. No other exhibit, addendum, schedule or other attachment (collectively "Addendum") is authorized by Company, and no Addendum shall be effective and binding upon Company unless executed by an authorized representative of Company.

Signed this _____ day of _____, 20 _____ .

(Type or print name below each signature line with official title if corporation, partnership, etc.):

GRANTOR:

_____ _____

_____ _____

_____ _____

STATE OF COLORADO

SS.

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ , 20____ by _____ .

Witness my hand and official seal.

Notary Public _____

My commission expires _____

New Mexico

Clear form

ELECTRIC VEHICLE PUBLIC CHARGING

Customer Service Agreement

THIS ELECTRIC VEHICLE PUBLIC CHARGING CUSTOMER SERVICE AGREEMENT (the "Agreement"), is made on the date last executed ("Effective Date") by and between SOUTHWESTERN PUBLIC SERVICE COMPANY, a New Mexico corporation, doing business as Xcel Energy ("Xcel Energy") having an address of 790 S Buchanan Street Amarillo, TX 79101 and _____ ("Customer") having an address of _____. Customer and Xcel Energy may be referred to herein individually as a "Party" or collectively as the "Parties."

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

1. Definitions

- "Applicable Laws" means all applicable federal and state laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, and orders of any governmental entity having jurisdiction over the Program, the services set forth in this Agreement, the practices involved in the services set forth in this Agreement, or any work Xcel Energy or Customer performs relating to this Agreement.
- "Infrastructure Buyout Amount" means an amount equal to the EV Supply Infrastructure Costs reduced by ten percent (10%) for each full calendar year between the In-Service Date and the date of termination of the Agreement. By way of example only, if the Agreement is terminated eighteen (18) months after the In-Service Date, and Customer is required to pay the Infrastructure Buyout Amount in accordance with Section 5 of this Agreement, the Infrastructure Buyout Amount payable by Customer would be equal to ninety percent (90%) of the EV Supply Infrastructure Costs. In the event the Agreement is terminated by Customer under Section 5.1 or terminated by Xcel Energy for Customer's breach under Section 5.2.3 prior to the In-Service Date, the Infrastructure Buyout Amount shall equal the EV Supply Infrastructure Costs.
- "Calendar Days" means every day shown on the calendar, beginning and ending at midnight.
- "Charging Equipment" means the electric vehicle charging equipment installed at the Customer Location which is used to deliver electricity from the EV Supply Infrastructure to an electric vehicle. Charging Equipment includes the ungrounded, grounded, and equipment grounding conductors, the electric vehicle connectors, attachment plugs, and all other fittings, devices (including the charger), power outlets, or apparatuses associated with the installed device, but does not include EV Supply Infrastructure. The Charging Equipment procured and installed by Customer under this Agreement must be on Xcel Energy's pre-qualified Charging Equipment list, which is updated from time to time by Xcel Energy, and must have a magnetic strip credit card reader.
- "Customer Location" means _____ _____ _____ .
- "Dispute" means a disagreement between Xcel Energy and Customer that arises under, or that relates to, the Agreement.
- "EV Driver" means an individual who uses the Charging Equipment at the Customer Location to charge an Electric Vehicle.
- "EV Supply Infrastructure" means service panels, conduit, and wiring from the service connection to the charger stub. EV Supply Infrastructure does not include the line extension necessary to connect Xcel Energy's distribution system to the service connection and does not include the Charging Equipment.
- "EV Supply Infrastructure Costs" means the total costs and expenditures incurred by Xcel Energy to procure, design, construct, and install the EV Supply Infrastructure at the Customer Location, including but not limited to costs of labor, labor loading, materials, transportation, overhead, indirect allocated costs, any allowance for funds used during construction ("AFUDC"), and any other capital related expenditures.
- "Facilities" means any privately, publicly, or cooperatively owned line, system, and/or other utility item that produces, transmits, or distributes communications, power, cable, television, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, signal systems, and other products or services that serve the public, and/or a privately-owned irrigation system. Any necessary appurtenances to each Facility are considered a part of the Facility.
- "Force Majeure Event" means fire, flood, explosion, catastrophe, accident, declared war, riot, act of God, act of terrorism, insurrection, strike, and Applicable Laws that prevent performance, to the extent (i) such event is beyond a Party's control, that due diligence and use of reasonable efforts by the Party claiming the Force Majeure Event could not have avoided or prevented, (ii) that materially and adversely affects a Party's ability to meet its obligations under this Agreement, and (iii) the Party claiming the Force Majeure Event gives prompt written notice of the same to the other Party. A Force Majeure Event does not include events due to the acts or omissions of the Party claiming the Force Majeure Event.
- "In-Service Date" means the date the EV Supply Infrastructure has been completed for the specific Customer Location and is ready for Customer to use. Following the installation and testing of the EV Supply Infrastructure at the Customer Location, the Parties will mutually agree upon and document the In-Service Date applicable to the Customer Location.
- "Program" means the Xcel Energy Public Charging Electric Vehicle Supply Infrastructure Program under which Xcel Energy will procure, install and maintain EV Supply Infrastructure to support EV charging by EV Drivers at the Customer Location.
- "Working Days" means any Calendar Day, excluding Saturdays, Sundays, and legal public holidays, as set forth in 5 U.S.C. § 6103(a).

2. Eligibility and Availability

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

2.1.1 Qualify as a non-residential electric customer of Xcel Energy in New Mexico;

2.1.2 Own or lease the Customer Location, or be Xcel Energy's customer of record associated with the premise's electric service meter at the Customer Location;

2.1.3 Provide express written consent, in a form acceptable to Xcel Energy in its sole discretion, from the owner of the Customer Location to grant Xcel Energy the appropriate real property rights, permits, licenses and easements necessary to install and continuously access the EV Supply Infrastructure installed, owned, and maintained by Xcel Energy, including, if requested by Xcel Energy, an easement signed by the owner of the Customer Location, in the form attached hereto as Exhibit A;

2.1.4 Customer must own, lease or operate EV Charging Equipment, which is connected to the EV Supply Infrastructure, at the Customer Location and make the Charging Equipment available for public use by EV Drivers to charge EVs;

2.1.5 Commit to installing a minimum of (a) one (1) Level 2 EV charging port per Customer Location, or (b) one (1) Direct Current Fast Charging (DCFC) port per Customer Location with a minimum of 50 kW charging capacity;

2.1.6 During the Term, agree to take electric service to the Charging Equipment on one of Xcel Energy's published commercial rates for which Customer is eligible;

2.1.7 All Charging Equipment electric load will be separately metered from any other load served at the Customer Location;

2.1.8 Provide proof, acceptable to Xcel Energy in its sole determination, that Customer has purchased, or will purchase as required by this Agreement and has the ability, financial, technical, or otherwise, to install Charging Equipment from Xcel Energy's pre-qualified Charging Equipment list. The Charging Equipment on this list meets Xcel Energy's technical and safety standards, demonstrates interoperability, cyber security, and smart charging capabilities that enable Customer to participate in managed charging rates or programs. The Charging Equipment selected and purchased by Customer must have a magnetic strip credit card reader, but may also have touchless as credit card readers;

2.1.9 Provide proof, acceptable to Xcel Energy in its sole determination, that Customer can provide demonstrated support of its ability to utilize the EV Supply Infrastructure within six (6) months of its In-Service Date; and

2.1.10 Acknowledgement that Customer may be required to take electric service to the Charging Equipment through a specified rate schedule (e.g., a time-varying rate) if Xcel Energy-owned EV Supply Infrastructure becomes subject to such a requirement as a result of a New Mexico Public Utilities Commission ("Commission") or other legal proceeding, Commission rule, New Mexico legislation, or other Applicable Laws.

2.2 To be eligible to receive EV Supply Infrastructure, Customer must also provide documentation acceptable to Xcel Energy evidencing that the Customer Location meets the following requirements (the "Customer Location Requirements"):

2.2.1 The Customer Location must be located in Xcel Energy's electric service territory;

2.2.2 The Customer Location must meet Xcel Energy's minimum safety, accessibility, convenience, and reliability requirements; and

2.2.3 The Customer Location must be able to provide a location acceptable to Xcel Energy, in Xcel Energy's sole determination, to deploy Charging Equipment in a cost-effective manner, based on factors such as proximity to transformers, length of trenching, available transmission and distribution capacity, and ease of access for EV Drivers, as determined by Xcel Energy in its sole discretion.

3. Customer Responsibilities

3.1 Except for the costs incurred by Xcel Energy to undertake the responsibilities set forth in Section 4 of this Agreement, Customer will pay all other costs associated with this Agreement.

3.2 Customer must purchase and install Charging Equipment in connection with the Program in accordance with the requirements set forth in this Agreement.

3.3 Customer will comply with Xcel Energy's safety and technical specifications.

3.4 Customer will assist in coordinating installation and maintenance of the EV Supply Infrastructure at the Customer Location with Xcel Energy and its contractor(s), including any applicable Charging Equipment manufacturers, vendors, or subcontractors, who provide services in connection with installing and maintaining the EV Supply Infrastructure. This will include issuing or obtaining any necessary licenses, permits or easements and right to allow Xcel Energy and its contractor(s) access to the Customer Location for the installation and maintenance of the EV Supply Infrastructure. Customer will also meet regularly with Xcel Energy to review and coordinate time schedules and track EV Supply Infrastructure and Charging Equipment installation status.

3.5 Customer will identify and be responsible for the procurement of all necessary Charging Equipment for the Program at the Customer Location that meet the Customer Requirements within ninety (90) Calendar Days of the Effective Date, and shall provide proof of such purchase to Xcel Energy. Failure to identify the Charging Equipment for the Customer Location and provide proof of purchase of such Charging Equipment within ninety (90) Calendar Days after the Effective Date will void any of Xcel Energy's obligations under Section 4 of this Agreement, and Xcel Energy may terminate, in its sole discretion, this Agreement immediately upon written notice to Customer in the event of such failure.

3.6 Customer will provide Xcel Energy with accurate and complete information in order to permit Xcel Energy to successfully install and complete the EV Supply Infrastructure for the Program. Customer consents to and permits Xcel Energy through its contractor(s), including any applicable Charging Equipment manufacturers, vendors, and subcontractors, who provided services in connection with installing and maintaining the EV Supply Infrastructure and Charging Equipment, as applicable, to have remote access in order to access, collect, and share data from the Charging Equipment with respect

to charging activity, vehicle usage, and technical performance (the "Data") during the Term of this Agreement for purposes of reporting, managing and administering the Program. Xcel Energy may disclose or use any Data, information, or documents it receives from Customer in any manner consistent with Commission data privacy requirements, including in connection with any legal or regulatory proceeding. If Xcel Energy is unable to collect Data through remote access to the Charging Equipment, if requested by Xcel Energy, Customer shall collect and provide on a quarterly basis the following Data:

a. Start and stop times of charges;
b. Peak kW per charging session and total kWh;
c. Number of charging sessions daily;
d. Amount of time each EV is actually charging per session;
e. Whether Customer is providing charging for free or if there is a usage fee to the EV Driver;
f. Operating costs including non-energy related; and
g. Any technologies being used to manage demand.

3.7 Customer will pay for power consumed by the EV Supply Infrastructure and dispensed from the Charging Equipment under Customer's applicable Xcel Energy service rate schedule. If at any point during the Term, Xcel Energy-owned EV supply infrastructure becomes subject to a specified service rate schedule (e.g., a time-varying rate schedule) as a result of a Commission proceeding, Commission rule, or New Mexico legislation, Customer shall switch to the specified service rate schedule for the remainder of the Term, and Customer shall pay for power consumed by the EV Supply Infrastructure and/or dispensed from the Charging Equipment under such rate schedule upon the effective date of this requirement.

3.8 Within six (6) months of the In-Service Date, Customer must install the Charging Equipment at the Customer Location sufficient to fully utilize the EV Supply Infrastructure.

3.9 After installation of both the Charging Equipment and EV Supply Infrastructure is completed, Customer will operate and maintain the Charging Equipment installed by Customer at the Customer Location for the Term of this Agreement and guarantees the safe and reliable operation of the Charging Equipment installed by Customer in accordance with Applicable Laws. During the Term, Customer grants Xcel Energy and its officers, agents, representatives, employees, and contractors a right of ingress, egress, and physical disturbance to the Customer Location on a seven (7) day, twenty-four (24) hour per day basis as required to construct, install, maintain, operate, repair, and remove EV Supply Infrastructure, in accordance with the provisions of this Agreement. The general manner of such ingress and egress is subject to coordination with Customer.

3.10 After installation of both the Charging Equipment and EV Supply Infrastructure is completed, Customer will provide at least two (2) parking stalls for each EV charging station installed at the Customer Location and will make the Charging Equipment at Customer Location available to EV Drivers for EV charging twenty-four (24) hours each day, seven (7) days each week, except at times when the Charging Equipment or EV Supply Infrastructure fails to operate or otherwise requires repair. Customer guarantees the Charging Equipment at Customer Location will be in full working order and available for EV charging at least 95 percent of the time annually.

3.11 After installation of both the Charging Equipment and EV Supply Infrastructure is completed, Customer will install or allow Company to install permanent signage to increase awareness and understanding of the benefits and opportunities for transportation electrification.

3.12 Customer will promptly notify Xcel Energy in the event Customer becomes aware that the Charging Equipment or EV Supply Infrastructure fails to operate or otherwise requires repair.

3.13 In the case of total equipment failure of all or a portion of the EV Supply Infrastructure that is not caused by Xcel Energy or its employees, agents, or contractors, and not covered by a manufacturer's warranty, Customer may either request that Xcel Energy replace the necessary equipment at Customer's expense or terminate this Agreement pursuant to Section 5.1 and pay Xcel Energy the Infrastructure Buyout Amount as set forth in Section 5.3.

3.14 Customer will maintain the area surrounding the EV Supply Infrastructure and Charging Equipment, including but not limited to, pavement maintenance, pruning of vegetation, snow removal, and the repair of security lighting.

3.15 Customer may remedy minor issues with the EV Supply Infrastructure that do not require qualified technicians to address, such as resetting infrequently tripped circuit breakers.

3.16 Customer will fund the customer contribution required for the line extension necessary to connect the EV Supply Infrastructure with Xcel Energy's electric distribution system as provided in Xcel Energy's Distribution Extension Policy as set forth in its New Mexico electric tariff. Customer is also responsible for the cost to complete any other upgrades necessary for the use of the EV Supply Infrastructure.

3.17 It is Customer's responsibility to maintain the Charging Equipment.

4. Xcel Energy Responsibilities

4.1 Xcel Energy and/or qualified and competent contractors hired by Xcel Energy will prepare construction drawings ("Construction Drawings") for the EV Supply Infrastructure at location(s) within the Customer Location determined by Customer in coordination with Xcel Energy. The Construction Drawings will show the proposed EV Supply Infrastructure and its location(s) within the Customer Location. Prior to Xcel Energy commencing construction of the EV Supply Infrastructure, Customer must approve the Construction Drawings. Once approved, the Construction Drawings may be modified only with the mutual consent of both Parties.

4.2 Xcel Energy will prepare and coordinate the EV Supply Infrastructure installation schedule ("Installation Schedule") with designated Customer staff as to minimize disruption to Customer's operations. Xcel Energy will also meet regularly with Customer staff to review and coordinate time schedules and track EV Supply Infrastructure and Charging Equipment installation status. Prior to Xcel Energy commencing construction of the EV Supply Infrastructure, Customer must approve the Installation Schedule. Once approved, the Installation Schedule may be modified only with the mutual consent of both Parties.

4.3 Xcel Energy will install the EV Supply Infrastructure pursuant to the Installation Schedule and consistent with the Construction Drawings in a good and workmanlike manner, with qualified and competent contractors, in compliance with all applicable codes and engineering standards, and in compliance with all Applicable Laws.

4.4 Except as otherwise provided in this Agreement, Xcel Energy will retain title and ownership of the EV Supply Infrastructure once installation and commissioning are completed. Customer shall acquire no right, title, or interest in any portion of the work performed by Xcel Energy or Xcel Energy's equipment, EV Supply Infrastructure or Facilities unless transferred to Customer under the provisions in Section 5. The work constructed and installed by Xcel Energy shall be and remain the personal property of Xcel Energy, shall not be

considered a fixture of the property, shall not attach to the realty, and shall not be alienable or lienable by Customer or any third party for the Term of this Agreement, and Customer shall not allow lien claims, third-party interest, or any encumbrances to be placed on the work, which includes the EV Supply Infrastructure. Xcel Energy shall not permit any mechanics' or other liens to be placed on Customer property during the Term of this Agreement caused by or resulting from any work performed, materials, or supplies furnished by or at the request of Xcel Energy or its contractors.

4.5 Xcel Energy shall own, operate, and maintain, at its own expense, the EV Supply Infrastructure at the Customer Location for the Term of this Agreement, unless terminated earlier as provided herein. Xcel Energy may engage one or more third-party contractors to complete its obligations under this Agreement. Xcel Energy shall not knowingly award contracts to contractors who have been or are suspended or debarred by the State of New Mexico or the United States. Xcel Energy shall be responsible for supervising any third-party contractor it chooses to retain.

4.6 After installation of, and while Xcel Energy owns the EV Supply Infrastructure, during the Term Xcel Energy shall conduct emergency repairs on the EV Supply Infrastructure on an as needed basis in accordance with the following:

4.6.1 Requests for emergency repairs can be made by Customer or Xcel Energy staff;

4.6.2 Customer's requests for repair shall be made via telephone, email, or text message to an agreed-upon representative at Xcel Energy;

4.6.3 All emergency repairs shall be completed by qualified technicians selected by Xcel Energy;

4.6.4 Emergency repair service calls shall begin with inspection of malfunctioning EV Supply Infrastructure, a diagnosis of the potential issue, and an expected time required for repair; and

4.6.5 Xcel Energy shall use commercially reasonable efforts to repair the EV Supply Infrastructure, in a timely manner.

4.7 After installation of, and while Xcel Energy owns the EV Supply Infrastructure, Xcel Energy may inspect the EV Supply Infrastructure at the Customer Location for general wear or malfunction on a periodic basis as determined by Xcel Energy. Such inspection may include but is not limited to the following:

4.7.1 Xcel Energy shall have the right, but not the obligation, to inspect the Charging Equipment for initial and ongoing integration with the EV Supply Infrastructure; and

4.7.2 If periodic inspections reveal failure of EV Supply Infrastructure, Xcel Energy shall request on-site technical services for inspection, diagnosis, and emergency repair as set forth in Section 4.6.

4.8 Xcel Energy shall be responsible for the cost of purchasing and installing the EV Supply Infrastructure. Xcel Energy shall also be responsible for all costs that Xcel Energy, in its sole discretion, deems reasonably required for operating and maintaining the EV Supply Infrastructure (except Customer shall pay for all power consumed by the EV Supply Infrastructure and/or dispensed from the Charging Equipment). All payments for this EV Supply Infrastructure will be made directly by Xcel Energy to the third-party contractor retained to complete the work, and Xcel Energy will have no financial obligation for any payments to Customer.

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

5. Term and Termination

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

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

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

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

5.2.3. If Xcel Energy terminates pursuant to this Section 5.2 for Customer's material breach of the Agreement, Customer shall pay the Infrastructure Buyout Amount, and when such fee is paid, Xcel Energy shall transfer title of all EV Supply Infrastructure to Customer on an "AS IS" basis, without any warranty (express or implied).

5.2.4. A Party terminating this Agreement pursuant to this Section 5.2 does not waive its rights to any remedy at law or in equity for a material breach of the Agreement.

5.3 Should (a) Customer terminate this Agreement for any reason other than pursuant to the provisions of Section 5.2.2 for Xcel Energy's material breach of its obligations hereunder, or (b) Xcel Energy terminate this Agreement pursuant to the provisions of Section 5.2.3 for Customer's material breach of its obligations hereunder, Customer will be charged and Customer will pay to Xcel Energy the Infrastructure Buyout Amount. The Infrastructure Buyout Amount, if applicable, will be due and payable by Customer thirty (30) days

following the termination of the Agreement. Upon payment of the Infrastructure Buyout Amount, Xcel Energy will transfer title of the EV Supply Infrastructure to Customer on an "AS IS" basis, without any warranty (express or implied).

5.4 At least one hundred and eighty (180) Calendar Days prior to the end of the Term of this Agreement, the Parties shall endeavor to negotiate a mutually agreeable plan for the EV Supply Infrastructure that will commence at the end of the Term of this Agreement, including but not limited to the following:

5.4.1 Extension of the Term of this Agreement for a mutually agreed period of time;

5.4.2 Upon expiration of the Term, Xcel Energy transfers the title to the EV Supply Infrastructure to Customer in "AS IS" condition, without any warranties (express or implied) by Xcel Energy; or

5.4.3 Upon expiration of the Term, Xcel Energy removes, at Customer's expense, the portion of the EV Supply Infrastructure that is above ground, restoring the Customer Location to original conditions or any other conditions agreed upon by the Parties, and Xcel Energy shall transfer title of the remaining portion of the EV Supply Infrastructure that is not above ground to Customer, without any payment from Customer, and the remaining EV Supply Infrastructure will be deemed abandoned in place in "AS IS" condition, without any warranty (express or implied) by Xcel Energy.

5.5 If, at the end of the Term of the Agreement, the Parties have not come to a mutual agreement pursuant to Section 5.4 above, the Term of the Agreement shall continue until the Parties are able to come to a mutual agreement or until either Party unilaterally terminates the Agreement pursuant to Section 5.1.

5.6 Upon termination or expiration of the Agreement, to the extent Customer takes ownership of the EV Supply Infrastructure, Customer assumes the responsibility of maintaining the EV Supply Infrastructure, and in order to continue receiving electric service, Customer must take electric service pursuant to a tariff for which the Customer is then eligible.

6. Warranties, Indemnification, and Limitation of Liability

6.1 Customer represents and warrants that: (i) the execution, delivery, and performance of the Agreement has been duly authorized by all requisite action on the part of Customer, and Customer has full power and authority to grant the rights and licenses granted by the Agreement to Xcel Energy, including but not limited to the rights and licenses set forth in this Agreement; (ii) this Agreement constitutes the legal, valid, and binding obligation of Customer; (iii) Customer is and will remain duly licensed, authorized or qualified to do business, and in good standing; and (iv) Customer is and will remain in compliance with all Applicable Laws applicable to Customer in connection with performance under this Agreement.

6.2 Xcel Energy, itself or through its contractor(s), shall perform the installation of the EV Supply Infrastructure in a safe and professional manner in accordance with all Applicable Laws. **EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6.2, XCEL ENERGY MAKES OR PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AGAINST INFRINGEMENT, WITH RESPECT TO THE WORK TO BE PERFORMED, SERVICES TO BE PROVIDED, OR EV SUPPLY INFRASTRUCTURE TO BE DELIVERED UNDER THIS AGREEMENT. IN THE EVENT TITLE TO EV SUPPLY INFRASTRUCTURE IS TRANSFERRED TO CUSTOMER IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, THE EV SUPPLY INFRASTRUCTURE IS PROVIDED "AS IS" AND WITH NO WARRANTY OF ANY KIND. XCEL ENERGY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

6.3 **IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL XCEL ENERGY BE LIABLE TO CUSTOMER AND ITS AGENTS, EV DRIVERS, CONTRACTORS AND EMPLOYEES, FOR SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE.**

6.4 Subject to the limitations contained in this Agreement, each Party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by Applicable Laws and shall not be responsible for the acts of the other Party and the results thereof. Notwithstanding the foregoing, to the fullest extent allowed by Applicable Laws, Customer shall, at its own expense, defend, indemnify, and hold Xcel Energy harmless from and against any claims, lawsuits, liability, losses, damages, or expenses (including attorney's fees) arising out of, resulting from, or in any way connected with the: (i) the Charging Equipment; (ii) breach of any warranty set forth in Section 6.1; (iii) Customer's, or its employees', agents', or contractors' negligent acts or omissions or willful misconduct; or (iv) the breach of Section 3.4.

6.5 In no event will Xcel Energy be liable to Customer for any claims, expenses, losses, damages, or lawsuits arising out of any interruptions or disturbances in electric service. Except as described in this section, Xcel Energy's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement, or from performance or breach thereof, shall in no case exceed the total dollar amount for the specific work giving rise to the claim.

7. General Terms

7.1 *No Third-Party Beneficiary.* This Agreement is between the Parties and creates no third-party beneficiaries. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise, to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

7.2 *Assignment Prohibited.* Customer shall not assign the Agreement, or any part thereof, nor delegate in whole or in part, its responsibilities hereunder, without the prior written consent of Xcel Energy. Unless otherwise agreed to in writing by Xcel Energy, no assignment will release or discharge Customer from any obligations under the Agreement. Any prohibited assignment or delegation shall be null and void.

7.3 *Legal Compliance.* The Parties shall comply with all Applicable Laws. Each Party shall monitor its agents, contractors, and employees for the purposes of ensuring compliance with all Applicable Laws. If any change in circumstances or law will affect a Party's performance under this Agreement, that Party shall notify the other Party of the change in circumstances or law at the earliest reasonable opportunity, and the Parties will negotiate in good faith to modify the Agreement to take into account the changed circumstance or law.

7.4 *Dispute Resolution.* In the event of any Dispute arising out of or relating to this Agreement, the complaining Party shall provide written notice of the Dispute to the other Party. The Dispute notice shall describe the facts surrounding the Dispute in sufficient detail to apprise the other Party of the nature of the Dispute.

Xcel Energy and Customer shall attempt in good faith to settle all Disputes through the negotiation process set forth in this Section. To this effect, unless otherwise agreed, Xcel Energy and Customer shall conduct at least one face-to-face meeting between the designated representatives from both Parties in an attempt to reach a solution that is satisfactory to both Xcel Energy and Customer. Such a meeting shall take place within seven (7) Calendar Days following delivery of a Dispute notice. If that meeting does not resolve the Dispute, Xcel Energy and Customer shall have executive level leadership from both Parties meet and attempt to resolve the Dispute.

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

7.5 *Applicable Law and Venue.* This Agreement shall be interpreted in accordance with the laws of the State of New Mexico. Venue for all legal proceedings arising out of or relating to this Agreement or breach thereof shall be in the state or federal court with competent jurisdiction in New Mexico.

7.6 *Non-Waiver.* The failure of either Party at any time to insist upon the strict performance of any or all of the terms, conditions, and covenants in this Agreement shall not be deemed a waiver by that Party of any subsequent breach or default in the said terms, conditions, or covenants by the other Party.

7.7 *Complete Agreement.* This Agreement constitutes the complete and exclusive understanding of the Parties concerning its subject matter. This Agreement supersedes all prior agreements, representations, understandings, and communications, written or oral, between the Parties as to the subject matter of this Agreement.

7.8 *Amendments.* The terms of this Agreement may be changed, amended or modified only by mutual signed agreement of the Parties.

7.9 *Consent to Disclose.* Customer consents to Xcel Energy's disclosure of the existence, terms, and status of this Agreement consistent with Commission data privacy requirements. Customer further acknowledges that pursuant to Section 3.6 of this Agreement, Xcel Energy may disclose any information and documents Customer provides to Xcel Energy pursuant to this Agreement. Customer also consents to Xcel Energy's disclosure of any information concerning the EV Supply Infrastructure and related services provided to Customer that Xcel Energy has in its possession, including "customer data" as defined by Commission rules, to address Xcel Energy's reporting requirements in Commission proceedings, including without limitation those established in Proceeding No. 20-00150-UT. To the extent the Commission requires any additional written consent from Customer for disclosure of such information, Customer agrees to cooperate with any such request by Xcel Energy. Without limiting the foregoing, by signing this Agreement and participating in the Program, the Customer consents and authorizes Xcel Energy to provide the Customer's information related to the Agreement or the Program to third parties for the purpose of administering the Program, coordinating with other third parties offering EV programs and ensuring that Program participants are not receiving funding multiple times for the same equipment and/or costs.

7.10 *Property of Xcel Energy.* All reports, drawings, plans, specifications, calculations, studies, software programs, tapes, models, and memoranda, if any, assembled or prepared by Xcel Energy or Xcel Energy's affiliates, independent professional associates, agents, consultants, contractors, or subcontractors pursuant to this Agreement are instruments of service in respect of the Agreement, and Xcel Energy shall retain all ownership and property interest therein. Customer may make and retain copies for information and reference in connection with the Program, provided, however, that it is understood and agreed that such documents are not intended to be re-used by Customer or others on extensions of the Program or on any other project or for any other purpose other than as expressly set forth in this Agreement, and Customer shall not re-use or disclose to any third party all or any portion of such work product without the express prior written consent of Xcel Energy, which consent shall not be unreasonably withheld.

7.11 *Force Majeure.* If a Party's performance is delayed or hindered by a Force Majeure Event, such Party is excused from such performance for the period of delay, provided that the Party claiming a Force Majeure Event has notified the other Party of the delay as soon as is reasonably possible. In such event, the period for the performance shall be extended for the period of such delay.

7.12 The Parties are independent contractors. Nothing in this Agreement or in the activities contemplated by the Parties hereunder shall be deemed to create an agency, partnership, employment, or joint venture relationship between the Parties or any of their representatives. Neither Party is an agent of the other nor has the authority to represent the other as to any matters. Customer is responsible for the safety of its respective agents, employees, and other representatives. Xcel Energy in no way assumes any of the duties, obligations, or liabilities attributed to Customer under the Agreement.

7.13 Those provisions of this Agreement which would require that they survive termination of the Agreement in whole or part in order to give them full force and effect will survive the termination of the Agreement, regardless of the date, cause, or manner of the termination. Xcel Energy's right to retain any Data collected in connection with the Program shall survive termination. In addition, all rights of action arising from or related to the Agreement that accrue during the Term of the Agreement, and any remedies for such claims, both legal and equitable, will survive such termination.

7.14 *Branding and Consumer Education.* The Parties agree to discuss opportunities for Xcel Energy branding, Consumer outreach and education efforts related to the benefits of electric vehicles, and implementation of renewable energy in connection with the Program.

7.15 *Taxes on Sale of EV Supply Infrastructure.* If Xcel Energy sells the EV Supply Infrastructure to Customer for an amount equal to the Infrastructure Buyout Amount for such EV Supply Infrastructure and Customer purchases the same, then Xcel Energy will deliver to Customer a Bill of Sale with a purchase price equal to the Infrastructure Buyout Amount for such EV Supply Infrastructure. Customer further agrees that, in accordance with federal and state laws in effect at the time of the sale of the EV Supply Infrastructure from Xcel Energy to Customer: (i) Customer shall be responsible for and shall pay transfer taxes, either directly to a taxing authority or to Xcel Energy, as required by law, related to the Infrastructure Buyout Amount as stated on the Bill of Sale; and (ii) Xcel Energy agrees to complete a Form W-9 "Request for Taxpayer Identification Number and Certification" in the event of such sale.

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

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

Customer: _____

_____

_____

_____

Xcel Energy: _____

_____

_____

_____

evapplications@xcelenergy.com

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

7.18 *Electronic Signature and Electronic Records*. Both Parties consent to the use of electronic signatures. The Agreement and any other documents requiring signature hereunder may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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

Customer name _____

By, Signature_____ Date_____

Contact name _____ Title_____

Southwestern Public Service Company of New Mexico, d/b/a Xcel Energy

By_____ Date_____

Name _____ Title_____

EXHIBIT A – FORM OF EASEMENT

ELECTRIC POWER LINE EASEMENT
SOUTHWESTERN PUBLIC SERVICE COMPANY

DATE _____

GRANTOR _____

GRANTOR'S MAILING ADDRESS _____

GRANTEE SOUTHWESTERN PUBLIC SERVICE COMPANY

GRANTEE'S MAILING ADDRESS 790 BUCHANAN, AMARILLO, TEXAS 79101

COUNTY AND STATE IN WHICH PROPTERY IS LOCATED _____ **COUNTY, NEW MEXICO**

For TEN and 00/100 DOLLARS ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Grantor (whether one or more) does hereby grant, bargain, sell and convey to Southwestern Public Service Company, a New Mexico Corporation (**"SPS"**) a perpetual, non-exclusive easement (**"Easement"**) to install, construct, reconstruct, maintain, operate, inspect, patrol, repair, replace, add to, change the number of circuits, alter voltage, remove, and relocate electric power lines on, over and across the lands now owned by Grantor located in _____ County, State of New Mexico that are described as follows (the **"Easement Area"**):

SEE EXHIBIT A AND EXHIBIT B ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE

Together with the rights to utilize an additional temporary ten foot (10') wide strip of land (for construction purposes only) adjacent to and parallel with each side the Easement Area as depicted on the attached Exhibit B.

The easement shall be subject to the following terms and conditions:

1. SPS is a corporation organized under the laws of the State of New Mexico, and has its main office and principal place of business in Amarillo, Potter County, Texas. It is a public utility.
2. The electric power lines will consist of a variable number of conductors, wires, communication cables, insulators, crossarms, protective devices, meters, terminal boxes, transformers, and all other necessary and desirable appurtenances and devices attached to, supported from, and a part of the necessary structures consisting of a variable number of wood, steel, other metal, or other substance members of poles, props, guys, and anchors, and all other fixtures, equipment, and devices used or useful for the operation, service, and connection of electric vehicle charging equipment (collectively referred to as the **"Facilities"**).
3. SPS, its employees, agents, contractors, successors and assigns, shall have the right (a) of ingress and egress over Grantor's adjacent lands to and from the Easement Area for the purpose of constructing, maintaining, operating, inspecting, patrolling, repairing, replacing, changing the number of circuits, altering voltage, adding to or removing the Facilities; (b) to relocate the Facilities within the Easement Area; (c) to remove, cut, fell, prune or otherwise control all trees, brush or other vegetation or other obstructions that might endanger or interfere with the operation, safety, or efficiency of the Facilities; (d) to level, grade, or perform necessary dirt work for proper ground clearance; and (e) to enter Grantor's property to conduct (i) routing surveys and studies relating to the Facilities, (ii) environmental surveys and studies relating to the Facilities, (iii) cultural resource surveys and studies relating to the Facilities, and (iv) any other activities that SPS deems necessary or desirable to comply with federal, state, or local statutes, laws, ordinances, rules, or regulations, or the requirements of any government or governmental authority or agency claiming jurisdiction over SPS or its operations.
4. SPS, its successors and assigns, must construct and at all times maintain the Facilities in accordance with the National Electric Safety Code requirements and practices now in effect. SPS will abide by all federal and state laws, ordinances, and regulations.
5. No temporary or permanent wells, buildings, or structures (including, without limitation, mobile homes or travel trailers) shall be placed or permitted to remain on, under, or over the Easement Area by Grantor. No other objects shall be erected, placed, or permitted to remain on, under, or over the Easement Area by Grantor, including trees, shrubs and fences, which may interfere with the Facilities or interfere with the exercise of any of the rights granted pursuant to this Easement.
6. In addition to the consideration set forth above, on completion of initial construction and installation, actual loss or damage to crops occasioned by initial construction and installation of the facilities will be paid. Payment will be made to Grantor as the fee owner of the Easement Area. Grantor shall be responsible for any distribution or allocation to third parties who may hold an interest in such damage payments and Grantor shall hold SPS harmless from the same.
7. Following initial construction, SPS shall use reasonable efforts to return the surface of the Easement Area, which is unencumbered by structures, to its original condition and appearance prior to SPS's work on the property. SPS shall not have the obligation to replace vegetation within the Easement Area other than to reseed to native grass. SPS shall reseed the Easement Area to native grass following initial construction.
8. Grantor shall have the right to request SPS conduct weed control work within the Easement Area. SPS may employ an independent contractor for weed control work, and that weed control work will utilize recognized and accepted weed control methods and materials. To request weed control work Grantor shall call the Program Manager for Vegetation Management for Xcel Energy at 1-800-895-4999.
9. Grantor acknowledges that the general course of this Easement is based on preliminary surveys of the desired location of the electric power line and agrees that the easement shall apply to the actual location of the electric power line when constructed.
10. Grantor binds Grantor, and Grantor's heirs, successors, assigns, and legal representatives, to WARRANT AND FOREVER DEFEND all and singular the rights conveyed in this instrument of SPS and its successors and assigns.
11. SPS has the right to assign all or part of the rights it receives under the Easement. The Easement will inure to the benefit of SPS and SPS's successors and assigns.
12. This Easement incorporates all agreements and stipulations between Grantor and SPS as to the subject matter of this Easement and no prior representations or statements, verbal or written, shall modify, supplement or change the terms of this Easement. The title of this document is inserted for convenience only and does not define or limit the rights granted pursuant to this Easement. SPS does not offer or agree to extend any Favored Nations provisions as a part of this Easement. This Easement consists of the document entitled "Electric Power Line Easement" and Exhibit A and Exhibit B containing a legal description and a sketch depicting the legal description if referenced above or attached hereto, and if attached hereto, a Consent and Subordination. No other exhibit, addendum, schedule or other attachment (collectively **"Addendum"**) is authorized by SPS, and no Addendum shall be effective and binding upon the parties unless separately executed by an authorized representative of SPS. When the context requires, singular nouns and pronouns include the plural.

Executed this _____ day of _____ , 20____.

GRANTOR _____

State of_____ County of _____

This instrument was acknowledged before me on the _____ day of _____, 20_____by_____ .

Notary's signature _____

Return Recorded Instrument to:
Southwestern Public Service Company
Attn: Right-of-Way
P.O. Box 1261
Amarillo, Texas 79105-1260