

## SETTLEMENT AGREEMENT

This Settlement Agreement (this “**Agreement**”) is made by and between Vote Solar, Michael Eisenfeld, James Neidhart, Jeffrey Neidhart, Steven Bair, Neil Tribbett, Jerry Knutson, Vickie Slikkerveer, The Coliseum, Inc. (d/b/a The Colosseum Gym), David Fosdeck, Stephen Ellison, and Erin Hourihan (each individually a “**Plaintiff**” and collectively, “**Plaintiffs**”), on the one hand, and the City of Farmington, New Mexico, d/b/a Farmington Electric Utility System (“**Defendant**”), on the other hand. Signatories to this Agreement will hereafter be referred to individually as a “**Party**” and jointly as the “**Parties**.”

### PREAMBLE

**WHEREAS**, on August 16, 2019, Plaintiffs filed a Complaint for Declaratory and Equitable Relief (“**Complaint**”) in the U.S. District Court for the District of New Mexico, alleging that Farmington failed to implement its obligation under federal law not to discriminate through electricity rates against customers who own solar generation, by charging a standby service rider, which case has been docketed as, *Vote Solar, et al. v. City of Farmington*, Case No. 1:19-cv-00753-MIS-CG (such case is referred to herein as “**the Litigation**”);

**WHEREAS**, on August 22, 2019, Plaintiffs served such Complaint on Farmington;

**WHEREAS**, Farmington opposed the Complaint on various grounds, both in Farmington’s Partial Motion to Dismiss for Lack of Subject Matter Jurisdiction filed with the Court on September 11, 2019, and in Farmington’s Answer filed with the Court on September 10, 2019;

**WHEREAS**, the United States Court of Appeals for the Tenth Circuit held the federal courts have power to review Plaintiffs’ claim and reversed the lower court judgment that granted Defendant’s motion to dismiss;

**WHEREAS**, the Parties have engaged in discovery, briefing, and motions practice to date, and were the Litigation to continue, the Parties will engage in at least further discovery and motions practice and the Litigation could be tried to the Court;

**WHEREAS**, the Parties wish to compromise, settle, and resolve any and all disputes between the Parties relating to the Litigation;

**NOW, THEREFORE**, in consideration of the releases and promises contained herein and other good and valuable consideration exchanged among the Parties, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

#### **A. Settlement.**

1. Upon the occurrence of the Settlement Effective Date (as defined below), in full and final satisfaction, settlement, and release of any and all claims, the Parties agree as follows:

- a) Within sixty (60) days of the Settlement Effective Date, except those customers receiving a check in lieu of credit, Farmington shall credit to the

customer accounts of each of the Plaintiffs that have paid standby service charges the full amount which each of such Plaintiff paid to Farmington, without interest, the sum of such charges for all Plaintiffs that have paid Farmington standby service charges totaling \$19,459.96. To the extent that (i) any Plaintiff requests payment of a refund by check, or (ii) the account for any Plaintiff is closed, whether before the Settlement Effective Date or thereafter while any amount of the credit remains unused, Farmington shall refund the full amount of standby service charges paid by such Plaintiff, or in the circumstance of a Plaintiff holding any unused credit the full amount of the unused credit, via check. The check shall be sent via United States mail no later than 60 days after the Settlement Effective Date for any customer requesting payment by check or any account closed prior to that date, and within 30 days of closure if an account initially receiving a credit is closed thereafter.

- b) Within ten (10) days of notice by Farmington that the payments and credits in paragraph 1.a., above, have been paid, the Parties shall enter and Plaintiffs shall file with the Court a stipulation of dismissal of the Litigation pursuant to Fed. R. Civ. P. 41(a)(1)(ii), which stipulation shall specify that dismissal is without prejudice.

2. The Parties agree and acknowledge that this Agreement is the result of a compromise and shall not be construed as an admission of any liability, wrongdoing, or responsibility or concession of any claims on their parts or on the parts of their predecessors, successors, parents, direct subsidiaries, indirect subsidiaries, affiliates, assigns, agents, their current and former directors, officers, employees, representatives, insurers, attorneys, and shareholders.

3. As of the Settlement Effective Date, the Parties release each other and each of their predecessors, successors, parents, direct subsidiaries, indirect subsidiaries, affiliates, assigns, agents, their current and former directors, officers, employees, representatives, insurers, attorneys, and shareholders, from any and all claims, proofs of claim, debts, demands, damages, attorneys' fees, judgments, liabilities, causes of action, restitution claims, or controversies of any kind whatsoever, whether before a local, state, or federal court or state or federal administrative agency or commission, or arbitration administrator, and whether now known or unknown, liquidated or unliquidated, that the Parties have, may have had, asserted, or may have asserted, prior to the date of this Agreement arising out of or relating to standby service charges previously assessed by Farmington and paid by Plaintiffs.

4. Nothing herein waives, releases, or concedes any claims arising after the Effective Date based on any charges, fees, tariffs or rates imposed in the future. The Parties expressly retain whatever rights they may have to take any positions concerning electric rate design and compliance with the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2601 *et seq.*, now and in the future. This shall include, but is not limited to, any future charges, rates, tariffs, or charges, whether in the form of a standby rider, backup fee, demand charge, or any other rate or tariff that Farmington may seek to impose or reimpose on customers with distributed generation in the future.

**B. Miscellaneous Terms and Conditions.**

5. This Agreement contains the complete agreement and understanding between the Parties.

6. The effective date of this Agreement (the "**Settlement Effective Date**") shall be the date upon which all Parties have executed this Agreement, as evidenced by the latest date reflected below the signatures of the authorized representatives of the Parties to this Agreement.

7. This document contains the entire agreement between the Parties and replaces any prior agreements or understandings that may have existed. This Agreement may be modified only by a written document signed by each of the Parties. No waiver of this Agreement or of any of the promises, obligations, terms, or conditions hereof shall be valid unless it is written and signed by the Party against whom the waiver is to be enforced.

8. Each Party acknowledges that it has had the opportunity to consult with legal counsel of its choosing prior to entering into this Agreement and that it enters this Agreement knowingly and voluntarily.

9. Each Party shall bear her, his, or its own attorney fees and costs arising from the the Litigation, or in connection with this negotiation and execution of this Agreement.

10. By executing this Agreement, each Party represents to the other that (a) the person executing this Agreement on its behalf is duly authorized and empowered to execute and deliver this Agreement; and (b) this Agreement constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with this Agreement's terms.

11. This Agreement, and each and every provision hereof, is for the exclusive benefit of the Parties hereof and not for the benefit of any third party.

12. This Agreement is binding on the successors and assigns of each of the Parties.

13. The Parties cooperated in the drafting of this Agreement, and in the event that it is determined that any provision herein is ambiguous, that provision shall not be presumptively construed against any Party.

14. This Agreement shall be governed, in all respects, under the laws of the State of New Mexico, irrespective of its choice of law rules.

15. This Agreement may be executed in multiple counterpart originals, each of which shall constitute one and the same document and shall be deemed an original; it may be executed by facsimile or electronic signatures which shall be deemed to have the same force and effect as an original signature.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement as follows:


Signature: 

Printed Name: David Bender

Title: Attorney

Dated: 7/22/22

Representative for Vote Solar, Michael Eisenfeld, James Neidhart, Jeffrey Neidhart, Steven Bair, Neil Tribbett, Jerry Knutson, Vickie Slikkerveer, The Coliseum, Inc. (d/b/a The Colosseum Gym), David Fosdeck, Stephen Ellison, and Erin Hourihan

Signature: 

Printed Name: Hank Adair

Title: Director - FELS

Dated: 7/26/22

Representative for City of Farmington, New Mexico, d/b/a Farmington Electric Utility System.