The City of Rifle will make reasonable accommodations for access to City services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 665-6405 for assistance.

REGULAR MEETING
May 17, 2017

WORKSHOP 6:00 P.M.
COUNCIL CHAMBERS

6:00 P.M. City Manager Recruitment RFP

The City Council may take action on any of the following agenda items as presented or modified prior to or during the meeting, and items necessary or convenient to effectuate the agenda items.

7:00 p.m. 1. Regular Meeting Call to Order and Roll Call

7:03 p.m. 2. Consent Agenda – consider approving the following items:
   A. Minutes from the May 3, 2017 Regular Meeting
   B. Minutes from April 19, 2017 Regular Meeting
   C. Consider Amending RMC Sec. 7-2-110 Regarding Dumping Prohibition - Ordinance No. 6, Series of 2017 – 2nd reading
   D. 2017 Intergovernmental Agreement for Mosquito Control
   E. Consider Substantial Compliance for Animal Shelter Annexation No. 2 – Resolution No 9, Series of 2017

7:08 p.m. 3. Citizen Comments
(For items not listed as public hearings on the agenda. Please limit comments to 3 minutes.)

7:11 p.m. 4. Action, if any, on Workshop Items (Mayor Winkler)
7:15 p.m. 5. Presentation from Oak Leaf Solar on Solar Garden Subscription

7:25 p.m. 6. Consider Authorizing the Conduct of a Mail Ballot Election - Resolution No. 8, Series of 2017 (Jim Neu)

7:30 p.m. 7. Consider Approval of contract for Art Dague Pool Renovation Schematic Design (Tom Whitmore)

7:40 p.m. 8. Consider Bleacher Installation for Taugenbaugh Field at Deerfield Park (Tom Whitmore)

7:50 p.m. 9. Consider Construction Management for Waterline Project

7:55 p.m. 10. Administrative Reports

8:05 p.m. 11. Comments from Mayor and Council

The order and times of agenda items listed above are approximate and intended as a guideline for the City Council.

Next Regular Meeting of Council: June 7, 2017 at 7:00 p.m.
A regular meeting of the Rifle City Council was called to order at 7:00 p.m. by Mayor Randy Winkler.

PRESENT AT ROLL CALL: Councilors Barbara Clifton, Joe Elliott, Ed Green, Theresa Hamilton, Annick Pruett, Dana Wood, and Mayor Randy Winkler.

OTHERS PRESENT: City Manager Matt Sturgeon, City Clerk Kristy Christensen, City Attorney Jim Neu, Assistant City Manager Kimberly Bullen, Rifle Community Television (RCTV) Manager Michael Churchill, Chief of Police Thomas Klein, Planning Director Nathan Lindquist, Parks and Recreation Director Tom Whitmore, Utilities Director Jim Miller, and Alex Zorn.

CONSENT AGENDA - APPROVE THE FOLLOWING ITEMS:
A. (Acting as Liquor Licensing Authority) Liquor License Renewals: Brenden Theatre Corporation dba Brenden Rifle 7 Theatres
B. Consider Towing and Impoundment Fees- Ordinance No. 5, Series of 2017 – 2nd reading

Councilor Hamilton moved to approve Consent Agenda Items A and B; seconded by Councilor Pruett.
Roll Call: Yes – Clifton, Elliott, Green, Hamilton, Pruett, Wood, and Winkler

CITIZEN COMMENTS
No citizen comments were heard.

CONSIDER PROCLAMATION FOR MUNICIPAL CLERKS WEEK
Proclamation recognizes the week of May 7 through May 13, 2017, as Municipal Clerks Week, and further extends appreciation to our Municipal Clerk, Kristy Christensen, and to all Municipal Clerks for the vital services they perform and their exemplary dedication to the communities they represent.

Councilor Hamilton moved to approve the proclamation for Municipal Clerks Week; seconded by Councilor Green.
Roll Call: Yes – Clifton, Elliott, Green, Hamilton, Pruett, Wood, and Winkler

CONSIDER AMENDING RMC SECTION 7-2-110 REGARDING DUMPING PROHIBITION - ORDINANCE NO. 6, SERIES OF 2017 – 1ST READING

AN ORDINANCE OF THE CITY OF RIFLE, COLORADO, AMENDING SECTION 7-2-110 OF THE RIFLE MUNICIPAL CODE TO PROHIBIT DUMPING IN THE CITY AND...
Rifle City Council Meeting, May 3, 2017

DEAUTHORIZE THE ISSUANCE OF ANY PERMIT FOR THE PURPOSE OF MAINTAINING A DUMP.

City Attorney Jim Neu explained the City’s Code Enforcement Officer has requested an amendment to Rifle Municipal Code Sec. 7-2-110 to clarify the prohibition against dumping in the City. The current Code provision contains an antiquated option to receive a permit from the City to maintain a dump. This confuses the enforcement against dumping by providing a property owner the option to receive a permit to allow such an activity. That option does not comply with modern standards of living in the City and staff recommends deleting it for clearer enforcement of the City’s Nuisance Code.

Councilor Clifton moved to approve the Ordinance No. 4 Series of 2017 on first reading, as presented, and order it to be published as required by Charter; seconded by Councilor Elliott.

CONSIDER AWARDING CONTRACT FOR WEST 5TH STREET IMPROVEMENT
Public Works Director Rick Barth noted staff has received bids on Phase 1 of the multi-phase West 5th Reconstruction and Improvement project. The City received four (4) qualified bids from familiar contractors. The low bid, with add alternate was received from Johnson Construction in the amount of $598,805.85. Staff recommends the City award the West 5th Street Improvement Project – Phase 1, with add alternate, to Johnson Construction for $598,805.85.

Councilor Green moved to award Johnson Construction the contract for Phase 1 of West 5th Street Improvement in an amount not to exceed $598,805.85; seconded by Councilor Pruett.
Roll Call: Yes – Clifton, Elliott, Green, Hamilton, Pruett, Wood, and Winkler

UPDATE ON COMPREHENSIVE PLAN
Planning Director Nathan Lindquist gave an update on the upcoming Comprehensive Planning workshop on May 10th.

CONSIDER APPROVING NEW TERMS FOR PLANNING AND ZONING COMMISSION MEMBERS
Planning Director Nathan Lindquist stated several Planning and Zoning Commission terms are expiring and each have requested to be appointed for a new term. Helen Rogers, Dustin Marantino, Rick Steffen an alternate, Marc Caldwell, and Tim Barnett would like to be reappointed for another four year term. Staff recommends re-appointment of these Commissioners.

Councilor Elliott moved to appoint Helen Rogers, Dustin Marantino, Rick Steffen, Marc Caldwell, and Tim Barnett to the Planning and Zoning Commission; seconded by Councilor Wood.
Roll Call: Yes – Clifton, Elliott, Green, Hamilton, Pruett, Wood, and Winkler

ADMINISTRATIVE REPORTS
Assistant City Manager Kimberly Bullen reported on the following items: Kathy Pototsky assisted with legislative changes to HB 17-1338, the new Water Treatment Plant, thank you to Jim Miller for his work on the water treatment plant, Congratulations to Chief for completing Post Certification, pool Charrette on May 16th, and Kimberly Bullen will be attending the Water Fluency class.

COMMENTS FROM MAYOR AND COUNCIL
Comments were heard from: Councilor Clifton, Councilor Elliott, Councilor Green, Councilor Hamilton, Council Pruett, Councilor Wood and Mayor Winkler.

Rifle City Council Meeting, May 3, 2017

2
EXECUTIVE SESSION FOR THE PURPOSE OF DETERMINING POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS, DEVELOPING STRATEGY FOR NEGOTIATIONS, AND/OR INSTRUCTING NEGOTIATORS, UNDER C.R.S. SECTION 24-6-402(4)(E); AND TO DISCUSS THE PURCHASE, ACQUISITION, LEASE, TRANSFER, OR SALE OF REAL, PERSONAL, OR OTHER PROPERTY INTEREST UNDER C.R.C. SECTION 24-6-402(4)(A) (REAL ESTATE, SERVICE CONTRACT)

Councilor Hamilton moved to go into executive session to discuss negotiations and property; seconded by Councilor Wood.
Roll Call: Yes – Clifton, Elliott, Green, Hamilton, Pruett, Wood and Winkler

CONSIDER AUTHORIZING CITY MANAGER TO EXECUTE REAL ESTATE CONTRACT AND CLOSING DOCUMENTS

Councilor Green moved to authorize the City Manager to execute a real estate contract and closing document for the house located at 154 East 11th Street; seconded by Councilor Pruett.
Roll Call: Yes – Clifton, Elliott, Green, Hamilton, Pruett, Wood, and Winkler

Upon return to Regular Meeting following conclusion of the executive session, meeting adjourned at 9:07 p.m.

Kristy Christensen
City Clerk

Randy Winkler
Mayor
A regular meeting of the Rifle City Council was called to order at 7:00 p.m. by Mayor Randy Winkler.

PRESENT AT ROLL CALL: Councilors Barbara Clifton, Joe Elliott, Ed Green, Theresa Hamilton, Annick Pruett, Dana Wood, and Mayor Randy Winkler.

OTHERS PRESENT: Assistant City Manager Kimberly Bullen, City Clerk Kristy Christensen, City Attorney Jim Neu, Rifle Community Television (RCTV) Manager Michael Churchill, Police Sergeant Sam Stewart, Planning Director Nathan Lindquist, Parks and Recreation Director Tom Whitmore, IT Director Mike Hall, Public Works Director Rick Barth, and Alex Zorn.

CONSENT AGENDA - APPROVE THE FOLLOWING ITEMS:
A. Minutes from the April 5, 2017 Regular Meeting
B. (Acting as Liquor Licensing Authority) Liquor License Renewals: Ruedi Creek Enterprises Inc. dba Sammy’s
C. Amending Section 7-2-140 of the Rifle Municipal Code, to clarify the City’s Power and Authority to Abate Dangerous Structures - Ordinance No. 3, Series of 2017 – 2nd Reading
D. Amending the Land Use And Development Code Pertaining to Commercial Outdoor Storage and Accessory Commercial Storage Structures - Ordinance No 4, Series of 2017 – 2nd Reading

Councilor Wood moved to approve Consent Agenda Items A, B, C, and D; seconded by Councilor Hamilton.
Roll Call: Yes – Clifton, Elliott, Green, Hamilton, Pruett, Wood, and Winkler

CITIZEN COMMENTS
No Citizen comments were heard.

CONSIDER PROCLAMATION FOR APRIL 21, 2017, AS ARBOR DAY IN THE CITY OF RIFLE
Parks and Recreation Director Tom Whitmore explained the Rifle Parks and Recreation desires to promote tree planting, care, and protection in the City of Rifle. Staff recommends approving the Arbor Day Proclamation declaring April 21, 2017 to be Arbor Day in Rifle.

Councilor Hamilton moved to approve the Arbor Day Proclamation declaring April 21, 2017 to be Arbor Day in Rifle; seconded by Councilor Pruett.
Roll Call: Yes – Clifton, Elliott, Green, Hamilton, Pruett, Wood, and Winkler
CONSIDER APPROVING CONTRACT FOR IT INFRASTRUCTURE NEEDS
IT Director Mike Hall stated staff has been working to finalize plans that will allow them to upgrade and repurpose aging virtual computing and phone components of IT infrastructure in the City Hall and Police Department datacenters. This update is critical to the continued operation of all City servers, desktops, office phones, many other systems and endpoints. Contract would be with Venture Technologies to assist in this process. The cost to complete these upgrades is $90,000. Staff recommends approval of the contract with Venture Technologies in the amount of $90,000.

Councilor Green moved to approve the contract with Venture Technologies for IT infrastructure in an amount not to exceed $90,000; seconded by Councilor Wood.
Roll Call: Yes – Clifton, Elliott, Green, Hamilton, Pruett, Wood, and Winkler

CONSIDER APPROVING PARKS EQUIPMENT TRADE-IN
Parks and Recreation Director Tom Whitmore noted that staff is requesting to trade-in a flatbed trailer, 1986 Ford Dump truck, and a 2005 Hustler zero turn radius mower. They would like to trade-in this equipment for a zero turn radius mower replacement and a dump bed trailer.

Councilor Elliott moved to approve trade in of a flatbed trailer, 1986 Ford Dump truck, and a 2005 Hustler zero turn radius mower for a zero turn radius mower replacement, and a dump bed trailer; seconded by Councilor Green.
Roll Call: Yes – Clifton, Elliott, Green, Hamilton, Pruett, Wood, and Winkler

CONSIDER AWARDING CONTRACT FOR CHIP AND SEAL
Public Works Director stated staff has requested and received bids for crack, chip and seal for streets in the West 5th area, south of West 5th, several parking lots for the Parks Department, and, if budget allows, the Devolution portions of Highway 13 and Highway 6. Two qualified bids were received. The low bid was from GMCO for $281,887.50. The low bid would result in the following expenditures: Street Improvement Fund ($221,887.50) and Parks Maintenance ($60,000). The 2017 Street Improvement Fund allocated $150,000 for this maintenance item; therefore, staff will be working with the contractor to reduce scope to meet budget. The contractor has been made aware of this scope reduction. Staff recommends the City award the 2017 Crack, Chip and Seal Contract to GMCO for the above mentioned scope with a total not-to-exceed $210,000.

Councilor Green moved to award the contract with GMCO for the 2017 Crack, Chip and Seal in an amount not to exceed $210,000; seconded by Councilor Pruett.
Roll Call: Yes – Clifton, Elliott, Green, Hamilton, Pruett, Wood, and Winkler

CONSIDER AUTHORIZING RIFLE REGIONAL ECONOMIC DEVELOPMENT CORPORATION (RREDC) TO MANAGE WESTERN ADVENTURE WEEKEND CONTRACTS
Planning Director Nathan Lindquist stated the RREDC has agreed to be the fiscal agent for the Western Adventure Weekend event September 22-24, 2017. The Visitor Improvement Fund Advisory Board (VIF) requests that an amount of $48,100 for the event be deposited with the Rifle Regional Economic Development Corporation (RREDC). At no cost to the City, the RREDC will create a VIF checking account to pay for costs associated with the event. This includes the salary of Alice Beauchamp the event coordinator.
To ensure that funds are spent appropriately, City Staff and the event coordinator have created a budget for the event. VIF will receive regular statements to track spending throughout the year.

Councilor Wood moved to authorize Rifle Regional Economic Development Corporation (RREDC) to manage Western Adventure Weekend contracts; seconded by Councilor Hamilton.
Roll Call: Yes – Clifton, Elliott, Green, Hamilton, Pruett, Wood, and Winkler

CONSIDER TOWING AND IMPOUNDMENT FEES- ORDINANCE NO. 5, SERIES OF 2017 – 1ST READING

AN ORDINANCE OF THE CITY OF RIFLE, COLORADO, AMENDING CHAPTER 8 AND APPENDIX A OF THE RIFLE MUNICIPAL CODE AND AUTHORIZING THE CITY TO CHARGE APPROPRIATE FEES FOR THE TOWING AND IMPOUNDMENT OF ABANDONED OR INOPERABLE VEHICLES

City Attorney Jim Neu explained Ordinance No. 5 removes the fixed costs for towing and impoundment fees and authorizes the Police Department to charge the actual costs back to the at-fault party. Towing costs are regulated by the Colorado Department of Revenue, Public Utilities Commission, and multiple towing operations may be used by the City at any time. Therefore, Ordinance No. 5 also authorizes the Police Department to enter agreements with local towing operations consistent with the rules and regulations of the State PUC.

Councilor Hamilton moved to approve Ordinance No. 5, Series of 2017 on first reading, as presented, and order it to be published as required by Charter; seconded by Councilor Pruett.
Roll Call: Yes – Clifton, Elliott, Green, Hamilton, Pruett, Wood, and Winkler

ADMINISTRATIVE REPORTS

City Clerk Kristy Christensen: Completed all-hands safety training and is in the process of completing the CIRSA audit.

Assistant City Manager Kimberly Bullen thanked Kristy for organizing the safety training.

COMMENTS FROM MAYOR AND COUNCIL
Comments were heard from: Councilor Clifton, Councilor Elliott, Councilor Green, Council Hamilton, Councilor Pruett, Councilor Wood and Mayor Winkler.

Meeting adjourned at 8:00 p.m.

Kristy Christensen
City Clerk

Randy Winkler
Mayor
AN ORDINANCE OF THE CITY OF RIFLE, COLORADO, AMENDING
SECTION 7-2-110 OF THE RIFLE MUNICIPAL CODE TO PROHIBIT
DUMPING IN THE CITY AND DEAUTHORIZE THE ISSUANCE OF ANY
PERMIT FOR THE PURPOSE OF MAINTAINING A DUMP.

WHEREAS, the City of Rifle ("Rifle" or the “City”) is a home rule municipality
organized under Article XX of the Colorado Constitution and with the authority of the Rifle
Home Rule Charter; and

WHEREAS, pursuant to the Rifle Municipal Code and C.R.S. § 31-15-401, the City is
authorized to declare what is a nuisance and provide for the abatement of the same, including the
imposition of fines and the attachment of liens upon any property where a nuisance is maintained
or abated; and

WHEREAS, Chapter 7 of the Rifle Municipal Code sets forth the City’s nuisance code; and

WHEREAS, Section 7-2-110 of the Rifle Municipal Code declares the dumping or
disposal of any garbage, trash, litter, rubbish, offal, filth, excrement, discarded building
materials, or combustible materials of any kind to be a nuisance, excepting in circumstances in
which a permit for such dumping or disposal has been issued; and

WHEREAS, the City has not and does not issue such dumping or disposal permits, and
believes that such exception to the prohibition of dumping or disposal was intended for use when
the City contemplated the existence of a public or private dump within the City limits, which
dump is no longer planned or useful; and

WHEREAS, the Rifle City Council finds and declares that it is in the interest of the
public health, safety, and welfare to remove the permit exception to the prohibition on dumping
or disposal in Section 7-2-110 of the Rifle Municipal Code.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF RIFLE, COLORADO,
ORDAINS THAT:

1. Incorporation of Recitals. The foregoing recitals are incorporated herein as if set
forth in full.

2. Code Amendment. Section 7-2-110 of the Rifle Municipal Code is hereby
amended as follows, with strike through language deleted:

Sec. 7-2-110. - Dumping on property.
It is unlawful for any person to use any land, premises or property within the City for the dumping or disposal of any garbage, trash, litter, rubbish, offal, filth, excrement, discarded building materials or combustible materials of any kind, without first having made application for and receiving a permit to do so. The application therefor shall be filed with the City Clerk and shall state the location of the land, premises or property, the manner in which the dumping or disposal is to be accomplished and the means and methods by which the applicant proposes to secure the same against the danger of disease, fire and other menaces to the public health and to provide for the suppression of rodents, mosquitoes and other insects. Upon such investigation and a finding that the proposed dumping will not cause any danger to the public health, the City Clerk shall issue such a permit upon the payment of a fee as set forth in Appendix A to this Code with the approval of the City Council.

INTRODUCED on May 3, 2017, read by title, passed on first reading, and ordered published by title as required by the Charter.

INTRODUCED a second time at a regular meeting of the Council of the City of Rifle, Colorado, held on May 17, 2017, passed without amendment, approved, and ordered published in full as required by the Charter.

Dated this 3rd day of May, 2017.

CITY OF RIFLE, COLORADO

BY: ____________________________
Mayor

ATTEST:

_____________________________
City Clerk
MEMORANDUM

To: Honorable Mayor and City Council

From: Kimberly Bullen, Assistant City Manager

Date: May 17, 2017

Subject: Inter-governmental Agreement (IGA) for Mosquito Control

The City of Rifle has participated in the Intergovernmental Agreement (IGA) for Mosquito Control with the cooperating agencies for many years. The subject of this agreement is a comprehensive integrated larval and adult mosquito control program, on public and private property throughout Garfield County and the participating municipalities by an independent contractor.

The project includes surveillance and the use of GIS mapping technology to identify mosquito breeding habitats and areas with high numbers of mosquito larvae and adults and includes the use of chemical pesticides for adult and larval mosquito control in a manner safe to citizens, the environment and pets. Chemical applications will only be done when the elected officials of each jurisdiction, or their designated staff member, determine the mosquito levels have reached a threshold that poses a public health risk.

This agreement provides for joint funding and cooperation to provide County-wide mosquito control and education. This agreement includes the following entities: Town of Carbondale, Town of Parachute, Town of Silt, Town of New Castle, City of Glenwood Springs, City of Rifle, and Garfield County. The cost of the entire project is $170,100 with each entity contributing the amounts identified below. The City has budgeted the appropriate funds under Professional Services in the Non-Departmental budget.

<table>
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<th>Municipality</th>
<th>Amount</th>
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<tr>
<td>Town of Carbondale</td>
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<td>City of Rifle</td>
<td>$18,300</td>
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<td>Garfield County</td>
<td>$121,190</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$170,100</strong></td>
</tr>
</tbody>
</table>

**ACTION**

1. Authorization to enter into the Inter-governmental Agreement (IGA) for Mosquito Control.
May 4, 2017

Jay Harrington, Town Manager  
Town of Carbondale  
511 Colorado Avenue  
Carbondale, CO 81623

Tom Baker, Town Administrator  
Town of New Castle  
Box 90  
New Castle, CO 81647

Stuart McArthur, Town Administrator  
Town of Parachute  
Box 100  
Parachute, CO 81635

Debra Figueroa, City Manager  
City of Glenwood Springs  
101 West 8th Street  
Glenwood Springs, CO 81601

Pamela Woods, Town Administrator  
Town of Silt  
Box 70  
Silt, CO 81652

Matt Sturgeon, City Manager  
City of Rifle  
Box 1908  
Rifle, CO 81650

Re: 2017 IGA – Mosquito Control

Dear Parties:

Enclosed, please find one (1) full copy and (6) copies of the signature page of the 2016 Intergovernmental Agreement for Mosquito Control for your review, consideration and submittal to your City or Town Council for authorization for signature and attestation by the City or Town Clerk.

After execution by the appropriate officials, please return one (1) fully executed IGA and six (6) additional executed signature pages to, “Attention: Mary Lynn Stevens” at the above address.
Once this office receives all of the signature pages from all entities and after signature by the Chairman of the Board, you will be sent a fully executed original for your files.

If you have any questions, please do not hesitate to contact this office.

Sincerely,

[Signature]

MARY LYNN STEVENS
PARALEGAL / OFFICE MANAGER

MLS
Attachments (IGA & 6 signature pages)

cc: Steve Anthony, Director, Vegetation Mgmt.
INTERGOVERNMENTAL AGREEMENT FOR MOSQUITO CONTROL - 2017

THE PARTIES to this Intergovernmental Agreement for Mosquito Control ("IGA") are the BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, STATE OF COLORADO, (hereinafter referred to as "County"); the CITY OF GLENWOOD SPRINGS, STATE OF COLORADO, (hereinafter referred to as "Glenwood"); the TOWN OF CARBONDALE, STATE OF COLORADO, (hereinafter referred to as "Carbondale"); the CITY OF RIFLE, STATE OF COLORADO, (hereinafter referred to as "Rifle"); the TOWN OF SILT, STATE OF COLORADO, (hereinafter referred to as "Silt"); the TOWN OF NEW CASTLE, STATE OF COLORADO, (hereinafter referred to as "New Castle"); and the TOWN OF PARACHUTE, STATE OF COLORADO, (hereinafter referred to as "Parachute").

WHEREAS, the parties to this IGA are authorized by Section 29-1-201, et seq., C.R.S., as amended, to provide for joint funding and cooperation to provide services and functions which each is otherwise lawfully authorized to provide; and

WHEREAS, the parties to this IGA desire to cooperate in funding and making available a County-wide mosquito control and education program; and

WHEREAS, a coordinated effort by the County and the municipalities within the County will permit a more effective mosquito control and education program and specifically will aid control of the mosquito species responsible for the spread of West Nile Virus.

NOW, THEREFORE, in mutual consideration of the premises and the covenants and promises set forth below, the parties to this IGA agree as follows:

1. PROJECT. The Project that is the subject of this IGA is a comprehensive integrated larval and adult mosquito control program, on public and private property throughout Garfield County that will be designed specifically for Garfield County and the municipalities by an independent contractor. The Project will provide surveillance, identifying mosquito breeding habitats and areas with high numbers of mosquito larvae and adults, with an emphasis on Culex mosquitoes. Surveillance will include the use of GIS mapping technology. The Project will include the use of chemical pesticides for adult and larval mosquito control in a manner safe to citizens, the environment and pets. Chemical applications will only be done when the elected officials of each pertinent jurisdiction, or their designated staff member, determine that mosquito levels have reached a threshold that poses a public health risk. Each jurisdiction is responsible for working with the Contractor to
insure that their jurisdiction is in compliance with the Federal Clean Water Act and the Colorado Discharge Permit System as administered by the Colorado Department of Public Health and Environment. The independent contractor will also provide community outreach and public education.

2. PROJECT COSTS. The cost for the entire Project that is the subject of this IGA shall not exceed One Hundred Seventy Thousand One Hundred Dollars and No Cents ($170,100.00), with each town and city contributing the amounts set forth below for a total contribution of Forty-Eight Thousand Nine Hundred Ten Dollars ($48,910.00) of the Project Cost. The remainder will be contributed by the County for the twenty-nine (29) square miles of service area outside of the municipalities.

3. COUNTY RESPONSIBILITIES. The County shall be the coordinating entity and the contracting and fiscal authority for the Project. The County's responsibilities shall include the creation of the Request For Proposals ("RFP"), management of the RFP process, selection of the contractor and management of the contract. The County shall also continue its leadership role in the functioning of the informal West Nile Working Group. The County shall pay an amount not to exceed One Hundred Twenty-One Thousand One Hundred Ninety Dollars and No Cents ($121,190.00) of the total Project Cost of One Hundred Seventy Thousand One Hundred Dollars and No Cents ($170,100.00), unless emergency services are required.

4. GLENWOOD SPRINGS RESPONSIBILITIES. Glenwood Springs shall be responsible for payment to the County of $5,075.00.

5. CARBONDALE RESPONSIBILITIES: Carbondale shall be responsible for payment to the County of $6,700.00.

6. RIFLE RESPONSIBILITIES: Rifle's proportionate share is $18,300.00.

7. SILT RESPONSIBILITIES: Silt shall be responsible for payment to the County of $4,900.00.

8. NEW CASTLE RESPONSIBILITIES: New Castle shall be responsible for payment to the County of $5,535.00.

9. PARACHUTE RESPONSIBILITIES: Parachute shall be responsible for payment to the County of $8,400.00.

10. PARTY RESPONSIBILITIES: All parties to this IGA shall cooperate with and assist the independent contractor chosen by the County to perform the work of the Project.
11. REMEDIES. If any of the cities or towns, identified in Paragraphs 4 through 9 above, fails to perform their payment obligation(s), the County may assume responsibility for the defaulting payment(s), and all other obligations of this IGA shall remain in full force and effect.

12. CONTRACT AWARD. The contract anticipated to define the Scope of Work needed for the Project shall be awarded by Garfield County pursuant to the terms of its Procurement Manual. The Notice to Proceed may be awarded prior to the payment obligations of the municipalities and towns being met.

13. INDEMNIFICATION. The parties acknowledge each is subject to the constitutional prohibitions against indemnification in Colo. Const. art XI, § 1. Neither can indemnify the other.

Nothing herein shall be interpreted as a waiver of governmental immunity to which each party would otherwise be entitled under Section 24-10-101, et seq., C.R.S., as amended.

14. APPROPRIATION. This IGA is contingent upon appropriation and budgeting for the costs required for the Project. Should any party fail to appropriate or have available sufficient funds to pay for the costs of its obligations set forth herein, this IGA shall be considered of no force or effect, except to the extent that the County has assumed the obligations of another party, as set forth herein. This IGA is not intended to, nor does it create a multi-year fiscal obligation as defined by Section 20, Article X of the Constitution of the State of Colorado.

15. EFFECTIVE DATE. This IGA shall be effective January 1, 2017 through December 31, 2017, no matter the date of execution.

16. AMENDMENT. This IGA may be amended by the parties solely through a written agreement signed by each.

17. FACSIMILES AND COUNTERPARTS. This IGA may be signed in counterparts, and facsimile signatures may be substituted for original signatures.

18. GOVERNING LAW. The laws of the State of Colorado shall govern the validity, performance and enforcement of this IGA. Venue for any action instituted pursuant to this IGA shall lie in Garfield County, Colorado.

19. AUTHORITY. Each person signing this IGA represents and warrants that said person is fully authorized to enter into
and execute this IGA and to bind the party represented to the terms and conditions hereof.

20. NOTICE. All notices required under this IGA shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid to the addresses of the parties set forth below. Notice addresses may be changed without amendment to this IGA.

Notice to County: Board of County Commissioners
Attn: County Manager
108 8th Street, Suite 213
Glenwood Springs, CO 81601
Phone: (970) 945-9150
Fax: (970) 384-5005

Notice to Glenwood: City of Glenwood Springs
Attn: City Manager
101 W. 8th St.
Glenwood Springs, CO 81601
Phone: 384-6400

Notice to Carbondale: Town of Carbondale
Attn: Town Manager
511 Colorado Avenue
Carbondale, CO 81623
Phone: (970) 963-2733
Fax: (970) 963-9140

Notice to Rifle: City of Rifle
Attn: City Manager
202 Railroad Avenue
P.O. Box 1908
Rifle, CO 81650
Phone: (970) 625-2121

Notice to Silt: Town of Silt
Attn: Silt Administrator
231 N. 7th St., Box 70
Silt, CO 81652
Phone: (970) 876-2353
Notice to New Castle: 
Town of New Castle  
Attn: Town Administrator  
450 W. Main  
P.O. Box 90  
New Castle, CO 81647  
Phone: (970) 984-2311

Notice to Parachute:  
Town of Parachute  
Attn: Town Administrator  
222 Grand Valley Way  
Box 100  
Parachute, CO 81635  
Phone: (970) 285-7630

ATTEST:

Clerk to the Board

ATTEST:

City Clerk

ATTEST:

Town Clerk

BOARD OF COUNTY COMMISSIONERS  
OF GARFIELD COUNTY, COLORADO

By: ____________________________  
Chairman

Dated: _________________________

CITY OF GLENWOOD SPRINGS,  
STATE OF COLORADO

By: ____________________________  
Mayor

Dated: _________________________

TOWN OF CARBONDALE  
STATE OF COLORADO

By: ____________________________  
Mayor

Dated: _________________________
ATTEST:

City Clerk

ATTEST:

Town Clerk

ATTEST:

Town Clerk

CITY OF RIFLE
STATE OF COLORADO

By: _____________________________
Mayor

Dated: ___________________________

TOWN OF SILT
STATE OF COLORADO

By: _____________________________
Mayor

Dated: ___________________________

TOWN OF NEW CASTLE
STATE OF COLORADO

By: _____________________________
Mayor

Dated: ___________________________

TOWN OF PARACHUTE
STATE OF COLORADO

By: _____________________________
Mayor

Dated: ___________________________
ATTEST:

City Clerk

ATTEST:

Town Clerk

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Town Clerk

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Town Clerk

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CITY OF RIFLE
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Dated: ________________________

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STATE OF COLORADO

By: ____________________________
Mayor

Dated: ________________________

TOWN OF PARACHUTE
STATE OF COLORADO

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Dated: ________________________
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STATE OF COLORADO

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Mayor

Dated: ________________________

TOWN OF SILT
STATE OF COLORADO

By: __________________________
Mayor

Dated: ________________________

TOWN OF NEW CASTLE
STATE OF COLORADO

By: __________________________
Mayor

Dated: ________________________

TOWN OF PARACHUTE
STATE OF COLORADO

By: __________________________
Mayor

Dated: ________________________
MEMORANDUM

TO: Honorable Mayor and City Council

FROM: Nathan Lindquist, Planning Director

DATE: May 9, 2017

SUBJECT: Resolution of Substantial Compliance for Annexation 2017-1

CASE: 2017-1; Animal Shelter Annexation #2

PURPOSE

Pursuant to State Statute, City Council must approve a Resolution of Substantial Compliance before annexation proceedings can ensue. The Resolution acknowledges the applicant’s findings that the subject property is eligible for annexation and sets a date certain for a Public Hearing to consider the annexation. The purpose of this resolution is not to contemplate or approve the annexation; it is to schedule the public hearing for that purpose.

RECOMMENDATION

Staff recommends City Council approve the Resolution of Substantial Compliance for the Animal Shelter Annexation #2, and set a public hearing date of June 21, 2017.

BACKGROUND

The subject property is immediately adjacent to Rifle High School, thus meeting the state requirement for contiguity to existing City Limits. The Animal Shelter has already annexed a portion of property for their future facility. This property is contemplated for future development by other parties. Staff will recommend a Developing Resources (DR) zoning.
WHEREAS, in April 2017, Garfield County Animal Welfare Foundation, Inc. filed with the City Clerk of the City of Rifle, Colorado, a petition and request that the City Council of the City of Rifle, Colorado, commence proceedings to annex to the City of Rifle a certain unincorporated tract of land located in the County of Garfield, State of Colorado, known as the Rifle Animal Shelter Annexation No. 2 shown on Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, the City planning staff advised the Council that after a review of the annexation Petition and map, staff determined that the Petition and map are in substantial compliance with the state statutes, as required by C.R.S. §31-12-107; and

WHEREAS, the Petition alleges as follows:

1. It is desirable and necessary that the territory described above be annexed to the City of Rifle, Colorado.

2. The requirements of C.R.S. §31-12-104, as amended, exist or have been met, including without limitation the following:
   A. Not less than 1/6th of the perimeter of the area proposed to be annexed is contiguous with the City of Rifle, Colorado.
   B. A community of interest exists between the area proposed to be annexed and the City of Rifle, Colorado.
   C. The area proposed to be annexed is urban or will be urbanized in the near future.
   D. The area proposed to be annexed is integrated with or is capable of being integrated with the City of Rifle, Colorado.

3. The requirements of C.R.S. §31-12-105, as amended, exist or have been met, including without limitation the following:
   A. In establishing the boundaries of the area proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate:
(1) has been divided into separate parts or parcels without the written consent of the landowner or landowners thereof.

(2) comprising twenty (20) acres or more (which together with buildings and improvements situated thereon having a valuation for assessment in excess of $200,000.00 for ad valorem tax purposes for the year preceding the proposed annexation), has been included without the written consent of the landowners.

B. No annexation proceedings have been commenced for the annexation to a municipality other than the City of Rifle, Colorado, of all or part of the territory proposed to be annexed.

C. The annexation proposed in the Petition will not result in the detachment of area from any school district and the attachment of the same area to another school district.

D. The annexation proposed in the Petition will not have the effect of extending the municipal boundary of the City of Rifle more than three (3) miles in any direction from any point on the current municipal boundary of the City in any one year; and

WHEREAS, the City has or will have in place a plan meeting the requirements of C.R.S. §31-12-105(e) prior to the effective date of the proposed annexation; and

WHEREAS, no election for annexation of the area proposed to be annexed to the City of Rifle has been held in the preceding twelve (12) months; and

WHEREAS, the signer of the Petition is the owner of one hundred percent (100%) of the territory proposed to be annexed, exclusive of public streets and alleys; and

WHEREAS, the annexation to the City of Rifle, Colorado, of the area proposed to be annexed will not result in a change of county boundaries; and

WHEREAS, the name and mailing address of the signer of the Petition and date of signing are included in the Petition, and the legal descriptions of the land owned by Petitioner is attached to the Petition. No signature on the Petition is dated more than 180 days prior to the date of filing of the Petition for annexation with the City Clerk; and

WHEREAS, the Petition is accompanied by four (4) or more copies of an Annexation Map containing, among other things, the following information:

A. A written legal description of the boundaries of the area proposed to be annexed to the City of Rifle, Colorado;
B. The boundary of the area proposed to be annexed to the City of Rifle, Colorado;

C. Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks; and

D. Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the City of Rifle, Colorado; and

WHEREAS, none of the area proposed to be annexed to the City of Rifle, Colorado, is presently a part of any incorporated city, city and county, or town, and is not contiguous to any other incorporated city, city and county, or town; and

WHEREAS, it appears that the Petition filed as aforesaid is in substantial compliance with the requirements of the Municipal Annexation Act of 1965, C.R.S. §31-12-107(1), as amended.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIFLE, COLORADO, THAT:

1. The City incorporates the foregoing recitals as findings by the City Council.

2. The Petition is in substantial compliance with the requirements of the Municipal Annexation Act of 1965, C.R.S. §31-12-107(1), as amended.

3. The City Council of the City of Rifle, Colorado, will hold a hearing upon the Petition for the purpose of determining and finding whether the area proposed to be annexed meets the applicable requirements of C.R.S. §31-12-104 and §31-12-105, as amended, and is considered eligible for annexation. The hearing shall be held on June 21, 2017, commencing at the hour of 7 p.m. in the City Council Chambers, 202 Railroad Avenue, Rifle, Colorado.

4. Any person may appear at such hearing and present evidence upon any matter to be determined by the City Council of the City of Rifle, Colorado.

5. The City Clerk of the City of Rifle, Colorado shall give notice of the hearing to be held upon the Petition by causing notice thereof, in accordance with C.R.S. §31-12-108(2), as amended, to be published once a week for four (4) successive weeks in the Citizen Telegram, a newspaper of general circulation in the area proposed to be annexed, the first publication to occur at least thirty (30) days prior to the aforesaid hearing. In addition, a copy of the published notice, together with a copy of this resolution and petition as filed, shall be sent by registered mail by the City Clerk to the board of county commissioners and to the county attorney and to any special district or school district having territory within the area to be annexed at least twenty-five (25) days prior to the hearing date.
THIS RESOLUTION was read, passed, and adopted by the Rifle City Council at a regular meeting held this 17\textsuperscript{th} day of May, 2017.

CITY OF RIFLE, COLORADO

By

Mayor

ATTEST:

City Clerk
May 10, 2017

Mayor Randy Winkler
Rifle City Council

Re: May 17, 2017 City Council Meeting

Dear Mayor Winkler and Members of the Rifle City Council:

The purpose of this letter is to briefly outline items we worked on for the May 17, 2017 Rifle City Council Meeting.

1. Ordinance No. 6, Series of 2017 (Amending RMC §7-2-110 Regarding Dumping Prohibition). The City’s Code Enforcement Officer has requested an amendment to Rifle Municipal Code §7-2-110 to clarify the prohibition against dumping in the City. The current Code provision contains an antiquated option to receive a permit from the City to maintain a dump. This confuses the enforcement of the prohibition against dumping by providing a property owner the option to receive a permit to allow such an activity. That option does not comport with modern standards of living in the City and staff recommends deleting it for clearer enforcement of the City’s Nuisance Code. Ordinance No. 6, Series of 2017 makes this amendment to the Code and is on your consent agenda on second reading.

As always, please feel free to contact us before the meeting if you have any questions.

Very truly yours,

KARP NEU HANLON, P.C.

James S. Neu

JSN:
Encs.
1 Executive Summary

March 15, 2017

Mr. Matt Sturgeon  
City Manager  
City of Rifle  
202 Railroad Avenue  
Rifle, CO 81650

Dear Mr. Sturgeon:

Thank you for your interest in hosting and subscribing to one of Oak Leaf’s Community Solar Gardens in Garfield County. We are also interested in the City participating as a subscriber to two solar gardens we are developing in Mesa County. Please see attached a proposal outlining the benefits to the City, which are realized through a land lease and subscription savings.

We are excited about this opportunity and look forward to continuing our discussions. We will plan on following up with you next week to answer any questions you might have.

Sincerely,

Michael McCabe  
Partner  
Oak Leaf Energy Partners  
303-893-6945  
mike@oakleafep.com
City of Rifle - Solar Garden Opportunity

2 Proposal

Oak Leaf, founded in 2005, has emerged as one of the largest and most successful solar development firms in Colorado with over 70 solar projects commissioned to date.

In December, Xcel awarded Oak Leaf several Community Solar Gardens across the State, including two in Garfield and surrounding Counties. There are two opportunities for the City to participate in these gardens: as a host and as a subscriber.

Host – State law requires the Community Solar Garden to reside in Xcel Energy’s territory and to interconnect to Xcel’s grid. We have identified a 10-acre site on City land adjacent to its wastewater treatment plant as shown in the aerial photo below. We would need a diligence period to conduct engineering studies on the land and to gain third party approvals (e.g. County and Xcel).

Subscriber – Oak Leaf also proposes the City subscribe to the Community Solar Garden. There is no upfront cost to the City to subscribe and the City will receive
City of Rifle - Solar Garden Opportunity

a bill credit from Xcel of approximately $.07/kWh. In turn the City would pay Oak Leaf $.0667/kWh with the spread representing the City’s revenue or profit. Depending on the City’s subscription level, the City could generate approximately $930k of revenue during the contract term.

3 Benefits to the City

In summary, by participating in the gardens, the City will benefit in several ways:

1) Economic Benefit – The City will receive a bill credit from Xcel for subscribing to the garden. This bill credit will be more than the amount the City pays Oak Leaf. The difference between the bill credit and the City’s payment to Oak Leaf is the City’s net income for being a subscriber. Of note, there is no upfront or ongoing capital cost incurred by the City so the City will earn money from the first day the garden is live.

2) Land Lease – If the City elects to participate as a subscriber and landlord, it will receive a nominal lease payment from Oak Leaf. Although solar projects can only support a nominal lease payment we do believe we are a fantastic neighbor and can easily co-exist with neighboring activities. And this is a great way to monetize underutilized land assets.

3) Sustainability Initiatives – Participating in the gardens will advance the City’s sustainability initiatives and provide positive public relations for the duration of the garden’s existence.
4 Economics

Please see below two tables, one illustrating the City’s projected revenue from participating as a subscriber and one illustrating the proposed lease revenue from hosting the project. The subscription opportunity assumes the City would subscribe at 40% across three community solar gardens.

City’s Subscription Opportunity Per Garden

<table>
<thead>
<tr>
<th>Year</th>
<th>Subscriber kWh</th>
<th>SG Credit1</th>
<th>Total Xcel Bill Credits to Subscriber</th>
<th>Oak Leaf Subscription Price2</th>
<th>Subscriber Payments to Oak Leaf</th>
<th>Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3,902,400</td>
<td>$0.06947</td>
<td>$271,100</td>
<td>0.0667</td>
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<tr>
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<td>5</td>
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<td>6</td>
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<td>$6,578,864</td>
<td></td>
<td>$5,644,426</td>
<td>$934,438</td>
</tr>
</tbody>
</table>

1 Assumes Xcel bill credit increases 2.5% annually
2 Assumes Oak Leaf price increases 1.35% annually

The City’s subscription will offset 75k tons of CO2 equivalent to 218 million miles of driving.
City of Rifle - Solar Garden Opportunity

City’s Hosting Opportunity

We are proposing a nominal lease payment similar to how the City structured its current solar deal with SunEdison. The City’s economic benefit is primarily received through the subscription agreement.

<table>
<thead>
<tr>
<th>Year</th>
<th>Lease Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$1,000</td>
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<tr>
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<td>3</td>
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<td>4</td>
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<tr>
<td>29</td>
<td>$1,741</td>
</tr>
<tr>
<td>30</td>
<td>$1,776</td>
</tr>
</tbody>
</table>
This Community Solar Garden Subscription Agreement ("Agreement") is made and entered into by and between Oak Leaf Solar XXXII LLC ("Operator") a Colorado limited liability company with offices at 2645 E. 2nd Avenue, Suite 206, Denver, CO 80206, or its successors and assigns and the City of Rifle, ("Subscriber") a _______________________________ jointly referred to as the “Parties.”

Recitals

WHEREAS, Operator intends to construct, install, own, operate, and maintain a solar photovoltaic System at the Premises described on Exhibit C;

WHEREAS, the Parties intend that, pursuant to the Tariff and the Power Purchase Agreement ("Producer Agreement"), the System will qualify as a Community Solar Garden and will generate Bill Credits to be applied to Subscriber’s monthly invoices from Public Service Company of Colorado for retail electric service for Subscriber Meters;

WHEREAS, Subscriber is willing to purchase, or pay to be allocated, Subscriber’s Allocated Percentage as described in Exhibit C of the Delivered Energy to be generated by the System commencing on the Commercial Operation Date and continuing through the Term, and Operator is willing to sell, or cause to be allocated, Subscriber’s Allocated Percentage of the Delivered Energy to be generated by the System to Subscriber commencing on the Commercial Operation Date and continuing through the Term, as provided under the terms of this Agreement;

WHEREAS, this Agreement is for Community Solar Garden SRC053975 located in [ ] County.

NOW THEREFORE, in consideration of the foregoing recitals, mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS.

Capitalized terms are defined as follows:

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

“Agreement” or “Contract” means the Community Solar Garden Subscription Agreement which consists of this agreement and all exhibits.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, permit, authorization, guideline, Governmental Approval, consent or
requirement of the federal government or the state of Colorado, enforceable at law or in equity, including the interpretation and administration thereof by such authority.

“Bankruptcy Event” means with respect to a Party, that either: (i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or (ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of 60 days.

“Bill Credit” means the monetary value of the electricity generated by the Solar System commensurate with Subscriber’s Allocated Percentage, as calculated pursuant to the Producer Agreement and the Tariff, and credited to Subscriber by Public Service Company of Colorado (“PSCO”) on its monthly invoice for electric service for the Subscriber Meters in accordance with the Producer Agreement.

“Bill Credit Rate” means the rate in the PSCO community solar garden tariff assigned to the Subscriber’s meter(s).

“Billing Cycle” means the monthly billing cycle established by PSCO.

“Business Day” means any day other than Saturday, Sunday, or a legal holiday.


“Construction Commencement” means the date on which the Operator issues a notice to proceed under the applicable construction contract for the System.

“Date of Commercial Operation” means the first day of the first full calendar month upon which commercial operation is achieved following completion of all Interconnection Agreement requirements and processes, as defined by the Producer Agreement executed by the Operator and PSCO.

“Delivered Energy” means the amount of alternating current (AC) energy generated by the System as inverted to AC and delivered to PSCO at the Production Meter (as defined in the Producer Agreement).
“Early Termination Date” means any date the Agreement terminates other than for expiration of the Term.

“Effective Date” means the date on which the Agreement is signed by authorized representatives of both Parties in accordance with Section 2.1.

“Environmental Attributes” means, without limitation, carbon trading credits, Renewable Energy Credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products.

“Estimated Remaining Payments” means as of any date, the estimated remaining Payments to be made through the end of the Term, as reasonably determined and supported by Operator.

“Expiration Date” means the date the Agreement terminates by reason of expiration of the Term.

“Financing Party” or “Lender” means, as applicable (i) any Person (or its agent) from whom Operator (or an Affiliate of Operator) leases the System, or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide financing to Operator (or an Affiliate of Operator) with respect to the System.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city, watershed district, park authority, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Operator at the Premises.

“Interconnection Agreement” means the Interconnection Agreement entered into or to be entered into between Operator and PSCO as required by the Producer Agreement.

“PSCO” means PSCO, a Colorado Corporation and any successor thereto and Xcel Energy Inc., to the extent it has control over PSCO’s business.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Producer Agreement” means the Solar*Rewards Community Producer Agreement to be entered into by and between Operator and PSCO whereby PSCO agrees to purchase all of the energy produced by the Community Solar Garden and to pay for such energy by providing Bill Credits to Subscriber (and other Subscribers). A copy of the Producer Agreement will be attached to this Agreement as Exhibit G.
“Premises” means the premises described in Exhibit C.

“PUC” means the Colorado Public Utilities Commission.

“Solar Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies and all other solar or renewable energy subsidies and incentives.

“Subscriber’s Allocated Percentage” means Subscriber’s allocated portion, stated as a percentage, of the Delivered Energy in a given month, as described in Exhibit C.

“Subscriber Meters” means the meters associated with specific subscriber PSCO accounts/premises listed in Exhibit I as updated from time to time by the Parties.

“Stated Rate” means a rate per annum equal to one and one-half percent per month or as otherwise established by Colorado Statute.

“System” or “Solar System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Exhibit C.

“System Operations” means Operator’s operation, maintenance and repair of the System performed in accordance with the requirements of this Agreement.


2. TERM AND TERMINATION.

2.1 Effective Date. This agreement is effective upon signature by authorized representatives of both Parties to the agreement.

2.2 Term. The term of the Agreement begins on the Effective Date and continues for 20 years from the Commercial Operation Date (or such other time period as specified in writing by the Parties), unless terminated earlier under the provisions of this Agreement. Without limiting either Party’s termination rights elsewhere in this Agreement, this Agreement will terminate if (i) Subscriber has moved out of or relocated from the county in which the Solar System is located or a contiguous county or relocated from the PSCO service territory, and has not, within 90 days after such move or relocation, assigned this Agreement in accordance with the provisions of Section 12.3, or (ii) the Producer Agreement is otherwise terminated.

2.3 Operator Termination Before Commercial Operation. If any of the following events or circumstances occur before Construction Commencement, the Operator may terminate the Agreement immediately upon written notice, in which case neither Party will have any liability to the other except for any liabilities that accrued before termination:

(a) After the performance of due diligence using industry standard methods and techniques, if there exist site conditions (including environmental conditions and ecological concerns such as presence of wildlife species) at the Premises or construction requirements that
could not have been reasonably known or discovered through due diligence as of the date of this Agreement and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed;

(b) There has been a material adverse change in the (i) rights of Operator to construct the System on the Premises, or (ii) financial prospects or viability of the Solar System, whether due to market conditions, cost of equipment or any other reason;

(c) After timely application to PSCO and best efforts to secure interconnection services, Operator has not received evidence that interconnection services will be available with respect to energy generated by the System;

(d) After the performance of due diligence using industry standard methods and techniques, Operator has determined and did not previously know that there are easements, other liens or encumbrances, or other facts, circumstances or developments that would materially impair or prevent, or have a material adverse effect on, the installation, operation, maintenance or removal of the System; or

2.4 Subscriber Termination Prior to Installation. If any of the following events or circumstances occur before Construction Commencement, Subscriber may terminate the Agreement immediately upon written notice, in which case neither Party will have any liability to the other except for any liabilities that accrued before termination:

(a) If PSCO or another party with the authority to do so, disqualifies the Operator of the facility from treatment as Operator of the Community Solar Garden under Colorado Statutes or Colorado Public Utilities Commission order;

2.5 Force Majeure. Upon the occurrence of a force majeure event, the Agreement may be terminated consistent with the provisions of Section 10.3 of this Agreement.

2.6 Termination for Default. If either Party defaults on their responsibilities under this Agreement, the Agreement may be terminated under Section 11.

2.7 Termination upon Mutual Agreement. This Agreement may be terminated at any time, for any reason, by mutual agreement of the Parties in writing.

3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 System Acceptance Testing.

(a) Operator must test the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States and as otherwise required by the Producer Agreement and the PSCO Tariff.

(b) Commercial Operation occurs when the “Date of Commercial Operation” occurs under the Producer Agreement. At least a week before the Date of Commercial Operation, Operator will send a written notice to Subscriber providing the Date of Commercial Operation and the provided date will be the Commercial Operation Date for the purposes of this
Agreement. Operator has the sole responsibility to notify PSCO of this date and get any necessary approvals from PSCO.

4. **SYSTEM OPERATIONS.**

   4.1 **Operator as Owner and Operator.** The System will be owned by Operator or Operator’s Financing Party and will be operated and maintained in accordance with the Producer Agreement and the PSCO Tariff and, as necessary, maintained and repaired by Operator at its sole cost and expense. Installation of the System, upgrades and repairs will be under the direct supervision of an NABCEP-certified solar professional. Maintenance will be performed according to industry standards, including the recommendations of the manufacturers of solar panels and other operational components.

   4.2 **Metering.** There will be two meters installed and maintained by PSCO, which will measure the amount of electrical energy flowing to and from the Premises as further described in the Producer Agreement. The Production Meter (as defined in the Producer Agreement) will record the amount of Delivered Energy. Operator will make the raw meter data available to Subscriber upon Subscriber’s request.

5. **DELIVERY OF ENERGY.**

   5.1 **Purchase Requirement.** Subscriber agrees to make payments calculated as Subscriber’s Allocated Percentage multiplied by Delivered Energy generated by the System beginning on the Commercial Operation Date and continuing for each applicable month of the Term. If there is a difference between the Bill Credit by PSCO to the Subscriber on the Subscriber Meter bills, and the Delivered Energy, for any reason not the fault of the Subscriber, the Subscriber’s payments will be based on the number of kWhs credited by PSCO on the Subscriber Meter bills.

   5.2 **Estimated Annual Delivered Energy.** The total annual estimate of Delivered Energy for any given year is the “Estimated Annual Delivered Energy.” The Estimated Annual Delivered Energy and the estimated amount of electricity to be allocated to Subscriber for each year of the Term starting on the Commercial Operation Date are identified in Exhibit D. The estimated amount of electricity allocated to Subscriber is Subscriber’s Allocated Percentage of the Estimated Annual Delivered Energy.

   5.3 **Environmental Attributes and Solar Incentives.**

      (a) Subscriber’s purchase does not include Environmental Attributes or Solar Incentives;

      (b) Subscriber disclaims any right to Solar Incentives or Environmental Attributes based upon the installation of the System, and to avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use and to help ensure that Environmental Attributes will be certified by Green-e® or a similar organization Subscriber will, at the request of Operator, execute documents or agreements reasonably necessary to fulfill the intent of this Section;
(c) When reasonably possible, Subscriber and Operator will consult with each other about press releases or public communications to help ensure that the Operator’s rights to claim Environmental Attributes are not compromised while allowing both Parties to claim as much publicity as possible without compromising Operator’s rights; and

(d) Without limiting the foregoing, Subscriber agrees that PSCO will acquire from Operator under the Producer Agreement all energy generated by the Solar System and all Renewable Energy Credits (as defined in the Producer Agreement) associated with the Solar System. Operator and Subscriber agree not to make any statement contrary to PSCO’s ownership.

5.4 Title to System. Throughout the Term, Operator or Operator’s Financing Party is the legal and beneficial owner of the System at all times, and the System will remain the personal property of Operator or Operator’s Financing Party.

5.5 Obligations of Parties. The Parties will work cooperatively and in good faith to meet all Community Solar Garden program requirements under Applicable Law, the Producer Agreement and the Tariff, including applicable interconnection and metering requirements. The Parties agree that beginning on the Commercial Operation Date (a) Operator will transmit all of the Delivered Energy into the PSCO system for the benefit of Subscriber, and (b) Subscriber (or its designee) shall be entitled to any and all Bill Credits issued by PSCO resulting from such transmission and corresponding with Subscriber’s Allocated Percentage.

6. **PRICE AND PAYMENT.**

6.1 Consideration. Subscriber shall pay to Operator a monthly payment (“Payment”) for Subscriber’s Allocated Percentage of Delivered Energy beginning on the Commercial Operation Date and continuing through the Term. The Subscriber will pay a price per kilowatt hour (“kWh Rate”) in the first year for its Allocated Percentage of the Delivered Energy up to but limited to the amount of kWh’s for which the Subscriber receives Bill Credits. The kWh Rate in the first year is defined as $.0669/kWh for a Subscriber meter using PSCO’s secondary general tariff and $.06996/kWh for a Subscriber meter using PSCO’s commercial tariff. The kWh Rate will increase 1.35% per year.

6.2 Invoices. Operator shall invoice Subscriber within 30 days of the last Business Day of each calendar month (each such date on which an invoice is issued by Operator to Subscriber, an “Invoice Date”) for the Payment in respect of Subscriber’s Allocated Percentage of Delivered Energy during the immediately preceding calendar month. Subscriber’s first invoice under this Agreement shall be for the first full calendar month after the Commercial Operation Date. For the avoidance of doubt, Subscriber shall (i) neither receive nor be entitled to any Bill Credits associated with Delivered Energy prior to the Commercial Operation Date, and (ii) have no obligation to make or any liability for Payments for Delivered Energy prior to the Commercial Operation Date. If the first month of commercial operation is less than a full calendar month, the Operator will bill Subscriber for any Delivered Energy on the invoice for the first full calendar month of operation.
6.3 **Time of Payment.** Subscriber will pay all undisputed amounts due hereunder within 35 days of the Invoice Date.

6.4 **Method of Payment.** Subscriber will make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Operator from time to time. If Subscriber does not have electronic funds transfer capability, or does not desire to use electronic funds transfer, payments shall be considered timely if a check is postmarked by the 30 day due date. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. Except for billing errors or as provided in Section 6.5 below, all payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.5 **Disputed Payments.** If a *bona fide* dispute arises with respect to any invoice, Subscriber shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Subscriber is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

6.6 **Billing Adjustments Following PSCO Billing Adjustments.** If, as a result of an PSCO billing adjustment, the quantity of Delivered Energy is decreased (the “Electricity Deficiency Quantity”) and PSCO reduces the amount of Bill Credits allocated to Subscriber for such period, Operator will reimburse Subscriber for the amount paid by Subscriber in consideration for the Electricity Deficiency Quantity. If as a result of such adjustment the quantity of Delivered Energy allocated to Subscriber is increased (the “Electricity Surplus Quantity”) and PSCO increases the amount of Bill Credits allocated to Subscriber for such period, Subscriber will pay for the Electricity Surplus Quantity at the kWh Rate applicable during such period.

6.7 **Non-Appropriation.** It is expressly understood and agreed that the obligation of the Subscriber to make payments to the Operator shall only extend to monies appropriated by the Subscriber’s governing authority and encumbered for the purposes of this Agreement. The Operator acknowledges that (i) the Subscriber does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the Subscriber. If an appropriation and resulting encumbrance for this Agreement is not made for a future fiscal year by the Subscriber (a “Non-Appropriation Event”), Operator, in its sole and absolute discretion, may terminate this Agreement or waive the City’s payment obligation.

7. **GENERAL COVENANTS.**

7.1 **Operator Covenants.** Operator covenants and agrees to the following:

(a) **Notice of Damage or Emergency.** Operator will within 3 business days notify Subscriber if it becomes aware of any significant damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.
(b) **System Condition.** Operator shall make commercially reasonable efforts to ensure that the System is capable of operating at a commercially reasonable continuous rate.

(c) **Governmental Approvals.** While providing the Installation Work and System Operations, Operator shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Operator and to enable Operator to perform such obligations.

(d) **Interconnection Fees.** Operator is responsible for all costs, fees, charges and obligations required to connect the System to the PSCO distribution system, including fees associated with system upgrades, production, and operation and maintenance carrying charges, as provided in the Interconnection Agreement (“Interconnection Obligations”). In no event shall Subscriber be responsible for any Interconnection Obligations.

(e) **Compliance with Producer Agreement, Tariff and Interconnection Agreement.** Operator shall cause the System to be designed, installed and operated in compliance with the Producer Agreement, the Tariff and the Interconnection Agreement.

(f) The Producer Agreement requires that Operator (as opposed to PSCO) is responsible for answering all questions from Subscriber regarding its participation in the Solar System. Operator is solely responsible for resolving disputes with PSCO or Subscriber regarding the accuracy of Subscriber’s Allocated Percentage and the Delivered Energy allocated to Subscriber in connection therewith. Notwithstanding the foregoing, Subscriber acknowledges that PSCO is responsible for resolving disputes with Subscriber regarding the applicable rate used to determine the Bill Credit.

(g) The representations Operator made in its proposal in response to the RFP issued by Subscriber, including representations as to Operator’s financial ability to operate and maintain the System are true and correct as of the date of this Agreement.

(h) The Operator is duly organized and validly existing and in good standing in the jurisdiction of its organization, and authorized to do business in the State of Colorado.

7.2 **Subscriber’s Covenants.** Subscriber covenants and agrees as follows:

(a) **Consents and Approvals.** Subscriber will ensure that any authorizations required of Subscriber under this Agreement are provided in a timely manner. To the extent that only Subscriber is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Subscriber will cooperate with Operator to obtain such approvals, permits, rebates or other financial incentives.

(b) **Subscriber Agency and Consent Form.** On the Effective Date, Subscriber will execute and deliver to Operator a Subscriber Agency Agreement and Consent Form in the form attached hereto as Exhibit A. Subscriber acknowledges that such agreement is required of Subscriber pursuant to the Producer Agreement.
8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the date of this Agreement and on the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

(d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors’ rights generally;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and

(f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Specific Representations and Warranties of Subscriber. Subscriber represents and warrants to Operator as of the date of this Agreement and on the Effective Date that:

(a) Subscriber is the sole party in interest agreeing to purchase Subscriber’s Allocated Percentage and is acquiring Subscriber’s Allocated Percentage for its own account, and not with a view to the resale or other distribution thereof, in whole or in part, and agrees that it will not transfer, sell or otherwise dispose of Subscriber’s Allocated Percentage in any manner in violation of applicable securities laws;

(b) Subscriber is not relying on (i) Operator, or (ii) other subscribers, or any of the employees, members of boards of directors (or equivalent body) or officers, of those parties, or this Agreement with respect to tax and other economic considerations involved in the Agreement

(c) Subscriber’s Allocated Percentage, combined with any other distributed resources serving the Subscriber Meters, represents no more than 120 percent of Subscriber’s average annual consumption at the Subscriber Meters over the last twenty-four (24) months;
(d) Subscriber is a retail electric service customer of PSCO and the Subscriber Meters are within the same county or contiguous county as the Solar System;

8.3 Exclusion of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 3.1, 4.1, 7.1, THIS SECTION 8, THE SYSTEM OPERATIONS AND PERFORMANCE PROVIDED BY OPERATOR TO SUBSCRIBER UNDER THIS AGREEMENT SHALL BE “AS-IS WHERE-IS.” NO OTHER WARRANTY TO SUBSCRIBER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY OPERATOR.

9. TAXES AND GOVERNMENTAL FEES. Operator is responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. Operator is not obligated for any taxes payable by or assessed against Subscriber based on or related to Subscriber’s overall income or revenues.

10. FORCE MAJEURE.

10.1 Definition. “Force Majeure Event” means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, “Force Majeure Event” shall include the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of Operator or as a result of such Party’s failure to comply with a collective bargaining agreement); (v) action or inaction by a Governmental Authority (unless Subscriber is a Governmental Authority and Subscriber is the Party whose performance is affected by such action nor inaction); and (vi) any event of force majeure under the Producer Agreement. A Force Majeure Event shall not be based on the economic hardship of either Party.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Article 10 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other
Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Subscriber shall not be excused from making any payments and paying any unpaid amounts due in respect of Subscriber’s Allocated Percentage of Delivered Energy prior to any performance interruption due to a Force Majeure Event.

10.3 Termination for Force Majeure. Either Party may terminate this Agreement upon 15 days written notice to the other Party if any Force Majeure Event affecting such other Party has been in existence for a period of 180 consecutive days or longer, unless such Force Majeure Event expires before the end of the 15 day notice period.

11. DEFAULT.

11.1 Operator Defaults and Subscriber Remedies.

(a) Operator Defaults. The following events are defaults with respect to Operator (each, an “Operator Default”):

(i) A Bankruptcy Event occurs with respect to Operator;

(ii) Operator fails to pay Subscriber any undisputed amount owed under the Agreement within 30 days from receipt of notice from Subscriber of such past due amount;

(iii) Operator breaches any material term of this Agreement and (A) if operator can cure the breach within 30 days after Subscriber’s written notice of such breach and Operator fails to so cure, or (B) Operator fails to commence and pursue a cure within such 30 day period if a longer cure period is needed;

(iv) The Producer Agreement is terminated for any reason; or

(b) Subscriber’s Remedies. If an Operator Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, Subscriber may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement. In the event of such termination, Subscriber shall use reasonable efforts to mitigate its damages.

11.2 Subscriber Defaults and Operator’s Remedies.

(a) Subscriber Default. The following events shall be defaults with respect to Subscriber (each, a “Subscriber Default”):

(i) A Bankruptcy Event occurs with respect to Subscriber;

(ii) Subscriber fails to pay Operator any undisputed amount due Operator under the Agreement within 30 days from receipt of notice from Operator of such past due amount; and
(iii) Subscriber breaches any material term of this Agreement and (A) if such breach can be cured within 30 days after Operator’s written notice of such breach and Subscriber fails to so cure, or (B) Subscriber fails to commence and pursue said cure within such 30 day period if a longer cure period is needed.

(iv) A Non-Appropriate event as described in Section 6.7.

(b) **Operator’s Remedies.** If a Subscriber Default described in Section 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, Operator may terminate this Agreement, sell Subscriber’s Allocated Percentage to one or more persons other than Subscriber, recover from Subscriber the actual, reasonable and verifiable damages related to lost Community Solar Garden subscription and REC revenues, and Operator may exercise any other remedy it may have at law or equity or under the Agreement. In the event of such termination, Operator shall use reasonable efforts to mitigate its damages.

12. **ASSIGNMENT.**

12.1 **Assignment by Operator.** Operator may not assign this Agreement or any interest therein, without the prior written consent of Subscriber, except as part of a Permitted Assignment as defined in Section 12.1(a). Operator shall provide Subscriber with such information concerning the proposed transferee (including any person or entity liable for the performance of the terms and conditions of this Agreement) as may be reasonably required to ascertain whether the conditions upon Subscriber’s approval to such proposed assignment have been met.

(a) Permitted Assignment. Operator may, without the consent of Subscriber, (1) transfer, pledge or assign all or substantially all of its rights and obligations hereunder as security for any financing and/or sale-leaseback transaction or to an affiliated special purpose entity created for the financing or tax credit purposes related to System, (2) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Operator; provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof, (3) assign this Agreement to one or more affiliates; provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof or (4) assign its rights under this Agreement to a successor entity in a merger or acquisition transaction; provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof. Subscriber agrees to provide acknowledgments, consents or certifications reasonably requested by any Lender in conjunction with any financing of the System.

(b) In the event of a Permitted Assignment by Operator of its interest in this Agreement to a person who has assumed, in writing, all of Operator’s obligations under this Agreement, Operator, without the necessity of any further document signed or actions taken by any party, shall be released from any and all further obligations hereunder, and Subscriber agrees to look solely to such successor-in-interest of the Operator for performance of such obligations.

Any Financing Party is an intended third-party beneficiary of this Section 12.1.

12.2 **Assignment by Subscriber.**
(a) Subscriber will not assign this Agreement or any interest herein, without the prior written consent of Operator; provided however that Operator shall not unreasonably withhold, condition or delay its consent; and provided, further, that Operator’s consent shall not be required to the assignment by Subscriber to another governmental entity in the event the State of Colorado reassigned responsibility to such other governmental entity for providing the services currently undertaken by Subscriber at the facilities associated with the Subscriber Meters, or to another governmental entity with comparable investment credit rating, and that otherwise meets the requirements of the Community Solar Garden program.

(b) Subscriber does not need Operator’s consent to change the Subscriber Meters for the same amount of subscription as long as all the Subscriber Meters are owned by the Subscriber and meet the requirements of the Community Solar Garden program. For such changes, Subscriber will notify Operator in writing and Operator will inform PSCO of the change as soon as practicable.

(c) Subscriber’s request for Operator’s consent to any proposed change or assignment as contemplated in Section 12.2 (a) must be in writing and provided to Operator at least 30 days before the proposed effective date of such change or assignment, which request must include: (i) Subscriber's name and mailing address; (ii) the current Subscriber Meter(s); (iii) the assignee’s meters; (iv) the name of the individual or entity to whom Subscriber is requesting to assign this Agreement (if applicable) and the consideration (if any) proposed to be provided to Subscriber for such assignment; and (v) the proposed effective date of such proposed change or assignment. In the case of any assignment of this Agreement in whole or in part to another individual or entity, (i) such assignee’s meters shall be located within PSCO’s service territory and within the same county as the Solar System or a contiguous county, (ii) such assignee shall execute a new Colorado Community Solar Program Subscription Agreement substantially in the same form as this Agreement, specifically including the representations and warranties in Section 8.2; and (iii) the value of any consideration to be provided to Subscriber for assignment of this Agreement may not exceed the aggregate amount of Bill Credits that have accrued to Subscriber, but have not yet been applied to Subscriber’s monthly invoice(s) from PSCO.

(d) Upon any assignment of this Agreement pursuant to this Section 12.2, Subscriber will surrender all right, title and interest in and to this Agreement. Any purported assignment in contravention of this Section 12.2 shall be of no force and effect and null and void ab initio. No assignment will extend the Term of this Agreement.

13. NOTICES.

13.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses below, or at such other address as may be designated in writing to the other Party from time to time.
13.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by email and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by email (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service, or 5 Business Days after deposit in the mail when sent by U.S. mail.

13.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Subscriber. Invoices shall be sent by regular first class mail postage prepaid.

14. INDEMNIFICATION, LIABILITY AND INSURANCE

14.01 Indemnification. Operator shall defend, indemnify, and hold harmless Subscriber, its present and former council members, officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney’s fees, resulting from any act or omission of Operator, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of Operator to perform any obligation under this Agreement.

14.02 Insurance. With respect to the services provided pursuant to this Agreement, Operator shall at all times during the term of this Agreement and beyond such term when so required have and keep in force the following insurance coverages:

Limits
1. **Commercial General Liability on an occurrence basis with contractual liability coverage:**

   - **General Aggregate**: $2,000,000
   - **Products—Completed Operations Aggregate**: $2,000,000
   - **Personal and Advertising Injury**: $1,500,000
   - **Each Occurrence—Combined**: $1,500,000
   - **Bodily Injury and Property Damage**: $1,500,000

2. **Workers’ Compensation and Employer’s Liability:**

   - **Workers’ Compensation Statutory**
     - If Operator is based outside the state of Colorado, coverage must comply with Colorado law.

   - **Employer’s Liability. Bodily injury by:**
     - **Accident—Each Accident**: $500,000
     - **Disease—Policy Limit**: $500,000
     - **Disease—Each Employee**: $500,000

   An umbrella or excess policy over primary liability insurance coverages is an acceptable method to provide the required insurance limits.

   The above establishes minimum insurance requirements. It is the sole responsibility of Operator to determine the need for and to procure additional insurance which may be needed in connection with this Agreement. Upon written request, Operator shall promptly submit copies of insurance policies to Subscriber.

   Operator shall not commence work until it has obtained required insurance and filed with Subscriber a properly executed Certificate of Insurance establishing compliance. The certificate(s) must name Subscriber as the certificate holder and as an additional insured for the liability coverage(s) for all operations covered under the Agreement. Operator shall furnish to Subscriber updated certificates during the term of this Agreement as insurance policies expire.

   **14.03 Liability.** Without Subscriber waiving any statutory immunities, each Party agrees that it will be responsible for its own acts and omissions and the results thereof, to the extent authorized by the law, and shall not be responsible for the acts and omissions of another Party and the results thereof. Subscriber warrants that it has an insurance or self-insurance program with minimum coverage consistent with the liability limits in Colorado Statutes.
15. **COMPLIANCE**

15.01 The Operator must comply with all applicable federal, state, and local laws, rules, and regulations, including any ruling of the Colorado Public Utilities Commission (PUC).

16. **DISCONTINUATION OF COMMUNITY SOLAR GARDEN PROGRAM.**

Notwithstanding anything herein to the contrary, this Agreement shall terminate immediately, without notice, if PSCO terminates the Producer Agreement associated with the Community Solar Garden identified by the PSCO unique garden identified in Exhibit C. In addition, this Agreement shall terminate immediately if the Community Solar Garden program is limited or materially adversely changed prior to Operator executing a Producer Agreement with PSCO, so long as the Operator has used its best efforts to secure the Producer Agreement up to the point of program change.

17. **MISCELLANEOUS.**

17.1 **Integration; Exhibits.** This Agreement, together with the attached Exhibits, constitute the entire agreement and understanding between Operator and Subscriber with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof. The Exhibits attached hereto are integral parts of the Agreement and are made a part of the Agreement by reference.

17.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Operator and Subscriber. To the extent any amendment changes Subscriber’s Allocated Percentage, such amendment shall include the representation by Subscriber set forth in Section 8.2(c).

17.3 **Cumulative Remedies.** Except as set forth to the contrary herein, any right or remedy of Operator or Subscriber shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

17.4 **Limited Effect of Waiver.** The failure of Operator or Subscriber to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

17.5 **Survival.** The obligations under Section 8.3 (Exclusion of Warranties), Section 9 (Taxes and Governmental Fees), Section 13 (Notices), Section 14 (Data Practices), Section 15 (Indemnification, Liability and Insurance), Section 17 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement, shall survive the expiration or termination of this Agreement for any reason.

17.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without reference to any choice of law principles. The Parties agree that the courts of Colorado and the federal Courts sitting therein shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law.
17.7 **Severability.** If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

17.8 **Relation of the Parties.** The relationship between Operator and Subscriber shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Operator and Subscriber, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

17.9 **Successors and Assigns.** This Agreement and the rights and obligations under the Agreement are binding upon and shall inure to the benefit of Operator and Subscriber and their respective successors and permitted assigns.

17.10 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

17.12 **No Reliance.** Subscriber is not relying on any representation, warranty or promise with respect to the Solar*Rewards Community Solar Program or the Solar System made by or on behalf of PSCO or Operator, except to the extent specifically stated in this Agreement.

17.13 **Record Keeping.** Operator will maintain books, records, documents and other evidence directly pertinent to performance of the work under this Agreement in accordance with generally accepted accounting and utility metering principles and practices, including all meter production records and adjustments thereto. Operator will also maintain the financial information and data used in preparation or support of the cost submission for any negotiated Agreement amendment and provide electronic, printed or copied documentation to the Subscriber as requested. These books, records, documents, and data must be retained for at least 6 years after the term of the Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the Operator agrees to maintain them until the Subscriber and any of its duly authorized representatives have disposed of the litigation or claims.

17.14 **Audit.** The records, books, documents, and accounting procedures and practices of the Operator and of any subcontractor relating to work performed pursuant to this Agreement shall be subject to audit and examination by the Subscriber. The Operator and any subcontractor shall permit the Subscriber or its designee to inspect, copy, and audit its accounts, records, and business documents at any time during regular business hours, as they may relate to the performance under this Agreement. Audits conducted by the Subscriber under this provision shall be in accordance with generally accepted auditing standards. Financial adjustments resulting from any audit by the Subscriber shall be paid in full within thirty (30) days of the Operator's receipt of audit.
18.15 **Dispute Resolution.** Operator must submit in writing to the Subscriber any dispute regarding the meaning and intent of this Agreement or arising from performance of this Agreement within 60 days after the dispute arises. The Subscriber or his/her designee must respond to the Operator in writing with a decision within 60 calendar days following receipt of the Operator’s dispute. Submission of a dispute to Dispute Resolution is a condition precedent to the Operator initiating any litigation relating to this Agreement.

Pending final decision of a dispute, the Parties will proceed diligently with the performance of the Agreement. Failure by the Operator comply precisely with the time deadlines under this paragraph as to any claim shall operate as a release of that claim and a presumption of prejudice to the Subscriber.

19. **LENDER PROVISIONS**

19.1 **Lender Collateral Assignment.** Subscriber hereby:

(a) Acknowledges and consents to the sale, assignment or conveyance or pledge or the collateral assignment by Operator to the Lender, of Operator’s right, title and interest in, to and under this Agreement, as consented to under Section 12.1 of this Agreement;

(b) Acknowledges that any Lender as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Operator’s interests in this Agreement;

(c) Acknowledges that it has been advised that Operator has granted a security interest in the System to the Lender and that the Lender has relied upon the characterization of the System as personal property, as agreed in this Agreement, in accepting such security interest as collateral for its financing of the System; and

(d) Acknowledges that any Lender shall be an intended third-party beneficiary of this Section 19.1.

19.2 **Lender Cure Rights Upon System Owner Default.** Upon any Event of Default by Operator, a copy of any notice delivered under Article 11 shall be delivered concurrently by Subscriber to any Lender at the addresses provided in writing by Operator to Subscriber. Following receipt by any Lender of any notice that Operator is in default in its obligations under this Agreement, such Lender shall have the right but not the obligation to cure any such default, and Subscriber agrees to accept any cure tendered by the Lenders on behalf of Operator in accordance with the following: (a) a Lender shall have the same period after receipt of a notice of default to remedy an Event of Default by Operator, or cause the same to be remedied, as is given to Operator after Operator’s receipt of a notice of default hereunder; provided, however, that any such cure periods shall be extended for the time reasonably required by the Lender to complete such cure, including the time required for the Lender to obtain possession of the System (including possession by a receiver), institute foreclosure proceedings or otherwise perfect its right to effect such cure, but in no event longer than 180 days; and (b) the Lender shall not be required to cure those Events of Default that are not reasonably susceptible of being cured.
or performed by Lender. The Lender shall have the absolute right to substitute itself or an Affiliate for Operator and perform the duties of Operator hereunder for purposes of curing such Event of Default. Subscriber expressly consents to such substitution, and authorizes the Lender, its affiliates (or either of their employees, agents, representatives or contractors) to enter upon the Premises to complete such performance with all of the rights and privileges of Operator, but subject to the terms and conditions of this Agreement.

19.3 Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Operator under the United States Bankruptcy Code, at the request of the Lender made within ninety (90) days of such termination or rejection, Subscriber shall enter into a new agreement with the Lender or its assignee having the same terms and conditions as this Agreement.

19.4 Except as otherwise set forth in this Article 19, the Parties’ respective obligations will remain in effect during any cure period.

19.5 If the Lender (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Operator’s assets and shall, within the time periods described in Section 19.3 above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement and this Agreement shall continue in full force and effect.

The remainder of this page is intentionally blank.
IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their duly authorized officers on the dates below:

Dated: _________________________  By: __________________________________

OAK LEAF SOLAR XXXII LLC

Dated: _________________________  By: __________________________________
Exhibit A

[Insert form of Subscriber Agency Agreement and Consent Form as required by Producer Agreement]
Exhibit B – Reserved
**Exhibit C  Description of Premises and System**

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solar System Location:</td>
<td>[] County__________________</td>
</tr>
<tr>
<td>Solar System Size:</td>
<td>Up to 2000 kW (DC) (representing an initial estimate, which may vary depending on the final design of the System)</td>
</tr>
<tr>
<td>Subscriber’s Allocated Percentage:</td>
<td>Allocated Percentage: 40.00%</td>
</tr>
<tr>
<td>Anticipated Commercial Operation Date:</td>
<td>[ To be inserted once PSCO completes its interconnection study. ]</td>
</tr>
<tr>
<td>PSCO Unique Garden Identifier:</td>
<td>SRC053975</td>
</tr>
</tbody>
</table>
**Exhibit D Estimated Annual Energy.**

Estimated Annual Delivered Energy commencing on the Commercial Operation Date, and continuing through the Term, with respect to System under the Agreement shall be based on the kWh Rate described in Section 6.1. Estimated production (which will be updated upon final completion) and allocation to Subscriber is listed below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Garden Output (kWh)</th>
<th>Subscriber Percentage (%)</th>
<th>Estimated Annual Delivered Energy (kWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3,358,000</td>
<td>40.00%</td>
<td>1,343,200</td>
</tr>
<tr>
<td>2</td>
<td>3,341,210</td>
<td>40.00%</td>
<td>1,336,484</td>
</tr>
<tr>
<td>3</td>
<td>3,324,504</td>
<td>40.00%</td>
<td>1,329,802</td>
</tr>
<tr>
<td>4</td>
<td>3,307,881</td>
<td>40.00%</td>
<td>1,323,152</td>
</tr>
<tr>
<td>5</td>
<td>3,291,342</td>
<td>40.00%</td>
<td>1,316,537</td>
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<tr>
<td>6</td>
<td>3,274,885</td>
<td>40.00%</td>
<td>1,309,954</td>
</tr>
<tr>
<td>7</td>
<td>3,258,511</td>
<td>40.00%</td>
<td>1,303,404</td>
</tr>
<tr>
<td>8</td>
<td>3,242,218</td>
<td>40.00%</td>
<td>1,296,887</td>
</tr>
<tr>
<td>9</td>
<td>3,226,007</td>
<td>40.00%</td>
<td>1,290,403</td>
</tr>
<tr>
<td>10</td>
<td>3,209,877</td>
<td>40.00%</td>
<td>1,283,951</td>
</tr>
<tr>
<td>11</td>
<td>3,193,828</td>
<td>40.00%</td>
<td>1,277,531</td>
</tr>
<tr>
<td>12</td>
<td>3,177,859</td>
<td>40.00%</td>
<td>1,271,144</td>
</tr>
<tr>
<td>13</td>
<td>3,161,969</td>
<td>40.00%</td>
<td>1,264,788</td>
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<tr>
<td>14</td>
<td>3,146,160</td>
<td>40.00%</td>
<td>1,258,464</td>
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<tr>
<td>15</td>
<td>3,130,429</td>
<td>40.00%</td>
<td>1,252,172</td>
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<tr>
<td>16</td>
<td>3,114,777</td>
<td>40.00%</td>
<td>1,245,911</td>
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<tr>
<td>17</td>
<td>3,099,203</td>
<td>40.00%</td>
<td>1,239,681</td>
</tr>
<tr>
<td>18</td>
<td>3,083,707</td>
<td>40.00%</td>
<td>1,233,483</td>
</tr>
<tr>
<td>19</td>
<td>3,068,288</td>
<td>40.00%</td>
<td>1,227,315</td>
</tr>
<tr>
<td>20</td>
<td>3,052,947</td>
<td>40.00%</td>
<td>1,221,179</td>
</tr>
<tr>
<td>Total</td>
<td>64,063,602</td>
<td></td>
<td>25,625,441</td>
</tr>
</tbody>
</table>

* For the purposes of the table Term year 1 begins on the Commercial Operation Date

The values in the table above are estimates of (i) the kWhs of Delivered Energy expected to be generated annually by the System and (ii) the portion of the Delivered Energy generated annually that is to be allocated to Subscriber pursuant to Subscriber’s Allocated Percentage, which amount is derived by multiplying the estimated Delivered Energy by the Subscriber’s Allocated Percentage in each year. The table will be updated upon final
design of the System; provided, however, any such updated values are also estimates. Estimated Delivered Energy may be reduced if the system size is reduced due to square footage limitations on the leased land.

Operators used the following methodology to develop the above production projections: National Renewable Energy Laboratory’s PVWatts and SAM software tools.
Exhibit F Commercial Operation Date Notification

[To be added when the Commercial Operation Date is Finalized]
Exhibit G Producer Agreement between Operator and PSCO

To be inserted prior to Commercial Operation Date
Exhibit H – Reserved
Exhibit I – Subscriber Meters

Subscriber will provide Operator with the Subscriber Meters and the relevant detail below prior to Construction Commencement.
Summary

In December, Xcel awarded Oak Leaf several Community Solar Gardens across the State, including two in Garfield and surrounding Counties. There are two opportunities for the City to participate in these gardens: as a host and as a subscriber. There is no upfront cost to the City to subscribe and the City will receive a bill credit from Xcel of approximately $.07/kWh. In turn the City would pay Oak Leaf $.0667/kWh with the spread representing the City’s revenue or profit. If the City elects to act as a host for one of these gardens, it will realize a second revenue stream in the form of a lease payment. Concurrently, the City would benefit from a one-time Use Tax, plus an annual tax on the solar panels as they are considered personal property. Additionally, by hosting a site, Rifle would directly aid the local labor force who construct, operate and maintain the system and although hard to quantify, this project will certainly help advance the sustainability initiatives of the City.

Financials

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subscription Revenue (20 years)</td>
<td>$934,438</td>
</tr>
<tr>
<td>Land Lease Payment (30 years)</td>
<td>$40,567</td>
</tr>
<tr>
<td>Use Tax (4.25% x $1.75M)</td>
<td>$74,375</td>
</tr>
<tr>
<td>Personal Property Tax (30 Years)</td>
<td>$32,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,081,380</strong></td>
</tr>
</tbody>
</table>
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIFLE, COLORADO, AUTHORIZING THE CONDUCT OF A MAIL BALLOT ELECTION FOR THE 2017 REGULAR MUNICIPAL ELECTION

WHEREAS, Section 2.3 of the Charter of the City of Rifle, Colorado, provides that a regular municipal election be held on the second Tuesday of September of odd-numbered years; and

WHEREAS, Section 31-10-102.7, C.R.S., permits a municipality to utilize the requirements a procedures of the Uniform Election Code of 1992 with respect to municipal elections; and

WHEREAS, Part 9, Article 10, Title 31 of the Colorado Revised Statutes sets forth the process and procedures for conducting municipal mail ballot elections; and

WHEREAS, the City Council of the City of Rifle, Colorado, has determined it is in the best interests of the City to promote voter participation and cost efficiency in the regular municipal election by conducting such election as a mail ballot election, and

WHEREAS, the City Council of the City of Rifle, Colorado, finds the proposed mail ballot election does not involve partisan candidates, nor is the election to be held in conjunction with, or on the same day as, a primary or congressional vacancy election; and

WHEREAS, the City Council of the City of Rifle, Colorado, seeks to appoint the Rifle City Clerk as the Designated Election Official for the regular mail ballot election to be held on September 12, 2017, and to comply with all applicable election procedures, including but not limited to compliance with the Rifle City Charter, the Rifle Municipal Code, and the Colorado Municipal Election Code.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIFLE, COLORADO, THAT:

1. The above recitals are hereby incorporated as findings by the City of Rifle.

2. The Rifle City Clerk is hereby authorized and directed, as the Designated Election Official for the regular mail ballot election, to conduct such election under the supervision of the Colorado Secretary of State, and subject to rules promulgated by the Colorado Secretary of State, pursuant to C.R.S. §31-10-101 et seq. (hereinafter “Colorado Municipal Election Code”).

3. The Rifle City Clerk, as the Designated Election Official for the regular mail ballot election, is further authorized and directed to take all actions necessary to conduct the regular mail ballot election pursuant to Article 10, Title 31, C.R.S.
4. There shall be one (1) precinct for this mail ballot election. The mail ballot polling location for said precinct shall be the Rifle City Hall, 202 Railroad Avenue, Rifle, Colorado 81650.

5. Pursuant to Section 31-10-401, C.R.S., the Designated Election Official is hereby delegated the authority and responsibility to appoint judges of the election. The Designated Election Official shall appoint at least three judges of the election at least fifteen (15) days before the election day.

6. The Designated Election Official shall establish the form of the regular mail election ballot.

THIS RESOLUTION was read, passed, and adopted by the Rifle City Council at a regular meeting this 17th day of May, 2017.

CITY OF RIFLE, COLORADO

By: ________________________________
    Mayor

ATTEST:

______________________________
City Clerk
Memo

To: City Manager, Honorable Mayor and Council

From: Tom Whitmore, Parks & Recreation Director

Date: May 8, 2017

Re: Art Dague Pool Renovation-Approve Design Company-

Schematic Design Phase.

ACTION: Consider approval of Pool Design Firm and authorization to proceed with Schematic Design.

BACKGROUND: Ohlson Lavoie Collaborative (OLC) has worked in the City of Rifle in the past, particularly with respect to recreation facilities and amenities, and is familiar with Rifle and Rifle’s community needs surveys. OLC has expertise in the design of recreation and aquatic facilities and has been working with the City on the conceptual design and cost estimating for the renovation of the Art Dague Pool and Waterslide since spring of 2016.

In order to insure continuity of the pool renovation project, staff requests approval to engage OLC as the design firm for the pool renovation project, and authorization to direct OLC to proceed with Schematic Design.

OLC’s proposal is to complete Design Development and Construction Documents for a fee of 7.2% of construction cost (with credit given to payment of services already rendered). This rate is within the industry range for facility design. The actual amount will depend on the final scope of the project, which is to be determined.

The fee for the Schematic Design phase is $38,800.00 plus the potential of up to $2,600.00 of reimbursable expense. (Please refer to the fee proposal, Page 3, “Phase 2 Schematic Design” for details). Authorization would be for an amount not to exceed $41,400.00.

Only Schematic Design would be completed prior to approval of financing. If project financing is approved by voters at the September 12 municipal election, OLC will be instructed to proceed with Design Development and Construction Documents. FF&E fees, shown on the fee proposal, will be deferred for consideration at a later date.

Thank you,
Tom
AGREEMENT FOR DESIGN SERVICES

Dated: April 13, 2017

Between: OWNER And OLC
City of Rifle, Colorado
Parks and Recreation Department
202 Railroad Ave
Rifle, CO 81650
(970) 665-6489, Tel
twhitmore@rifleco.org

Ohlson Lavoie Corporation
dba/ Ohlson Lavoie Collaborative
616 E, Speer Blvd.
Denver, Colorado 80223
(303) 294-9244, Tel
olc@olcdesigns.com

Project: Art Dague Community Pool Renovation - Rifle, Colorado

Description: The project consists of the planning, design and renovation of the existing Art Dague Community Pool to serve the community of Rifle and the surrounding region. The concept plan anticipates the limited renovation of the existing parking area while improving the existing bathhouse, waterslide and plunge pool. Additional renovations may include a new parking drop-off, entry plaza, check-in, retail, guards/first-aid, office, family changing rooms, locker rooms, concessions with patio, outdoor pool equipment area, and support spaces. The concept plan features an outdoor zero-depth entry leisure pool with sprays, geysers and water features, 6 lane x 25yd. competition pool with a diving board and climbing wall, (2) new waterslides (inner tube, speed) and plunge pool, lazy river with sprays, geysers and bubble pit, family whirlpool, and a variety of shade structures. The estimated construction budget for the building and site is $4,500,000. Construction is anticipated to be complete by Summer, 2019.

Project Schedule:
- OLC can begin design work immediately upon your authorization to proceed.
- Project schedule will be determined after the public process has been completed and funding resources have been clearly defined.
- Estimated completion by June, 2019 or earlier.

Owner’s Duties:
- Provide complete information in a timely manner regarding requirements for, and limitations to, the project.
- Provide a Soils Report, Site Survey with legal descriptions, existing conditions, boundaries, utilities, topography, and other site information necessary for OLC to complete their work
- Engage a Construction Manager-General Contractor (CM-GC) to define the ‘Cost of Work’ during all phases and to manage the project through construction.
- Utilize conference calls, video conferencing and electronic communication as much as possible.

Included Services:
- Architecture, Interiors, Aquatic Design and Documentation
- Civil, Structural, Mechanical/Plumbing/Fire Protection, Electrical/Lighting Engineering and Documentation
- Concessions Design and Documentation (assumes pre-packaged foods and no exhaust hood).
- Bid/Permit/Construction-ready Documentation, including coordination with all local building and health officials as required by scope.

The following phases for design services are included in this agreement. Each phase will start only after OLC receives approval to proceed by the OWNER:

Phase 1 PROGRAMMING / CONCEPT DESIGN

Scope of Work: During this phase, OLC will meet with key stakeholders, community leaders, staff, and the public to help refine the program requirements, design direction and phasing for the overall project. OLC will then incorporate this input into a revised conceptual layout. Two iterations of drawing review and comment are anticipated.

Deliverables:
- Kick-Off Meeting to Confirm Project Parameters (Scope, Budget, Schedule)
- Review Project with Local Planning/Zoning, Building, and Health Officials
- Meet with key stakeholders and staff
- (1) Community Meeting / Presentation
- Preliminary Program Space Summary
Phase 2 SCHEMATIC DESIGN

Scope of Work: During this phase, OLC will work closely with the City and CM-GC to continue developing the program requirements for the overall project while incorporating them into a more detailed schematic layout for each individual component and system. Several iterations of drawing review and comment are anticipated.

Deliverables:
- Updated Program Space Summary
- Updated Project Schedule
- Updated Schematic Site Plan / Floor Plans
- Schematic Building Sections, Elevations and a 3D View
- Schematic Pool Plans, Details, and Feature Selections
- Preliminary Civil, Structural, Mechanical, Plumbing, Electrical Diagrams and Narratives
- Assist CM-GC with Updating Project Costs / Budget

Schedule: 4 Weeks (Does not include review time for City of Rifle)
Site Visits: 1 Anticipated
Fee: $9,700 Lump Sum
Reimbursables: $500 Estimated

Phase 3 DESIGN DEVELOPMENT

Scope of Work: Provides scope of work in outline terms required for a complete and operational facility. Provides sufficient information for the CM-GC to estimate the cost of the work. Though not intended for construction, the deliverables in this phase will provide enough detailed information to commence construction documentation. Preliminary aquatic, structural, mechanical, plumbing, and electrical system design and engineering is included. Operational parameters of all major building systems will be established. Several iterations of review and comment are anticipated.

Deliverables:
- Updated Program Space Summary
- Updated Project Schedule
- Site Plan (site improvements, grading, parking, landscape concepts)
- Detailed Floor Plans @ 1/8" Scale
- Detailed Reflected Ceiling Plans @ 1/8" Scale (includes conceptual lighting layout and preliminary selection of fixtures)
- Updated Building Sections and Elevations
- Interior Design Concept with generic Finish Schedule (excluding FF&E)
- Pool Scope Drawings (includes preliminary engineering of aquatic components: sizing, distribution, diagrams, and operational systems)
- Preliminary Civil, Structural, Mechanical, Plumbing, and Electrical Design and Engineering
- Outline Specifications
  Assist CM-GC with Updating Project Costs / Budget

Est. Schedule: 6 Weeks (Does not include review time for City of Rifle)
Site Visits: 1 Anticipated
Fee: $38,800 Lump Sum
Reimbursables: $2,600 Estimated
Phase 4 CONSTRUCTION DOCUMENTATION and ADMINISTRATION

Scope of Work: Once the previous phases are completed to your satisfaction, OLC will commence with the preparation of Construction Documents suitable for bidding, permitting, and construction. Although the CM-GC will manage the construction phase, OLC will continue to assist by providing standard Construction Administration services.

Deliverables:
- Architect-of-Record Services including permit and construction-ready documentation (CDs)
- Interior Design (includes presentation color board)
- Civil, Landscape/Irrigation, Structural, Mechanical, Plumbing, Fire-Protection, Electrical, and Aquatic Design & Engineering
- Specifications

| Est. Schedule: | 8 Weeks for Documentation |
| Est. Schedule: | 40 Weeks for Construction |
| Site Visits: | As Required |
| Fee: | 7.2% of Estimated Construction Costs (with credit for amounts paid in all previous phases) |
| FF&E Fee: | 40% of Installed Cost of Goods |
| Reimbursables: | .08% of Estimated Construction Costs |

Additional Services: OLC can assist the OWNER with services beyond those indicated above and not included in this agreement at a negotiated sum or at our standard hourly rates. OLC will notify OWNER before commencing any of the following:
- Landscape / Irrigation Design Consultant
- Planning, Zoning and other Governing Authority approval processing
- Community Meetings or Presentations
- Scope or budget changes which require modifications to approved drawings
- Signage (Interior or exterior beyond code compliance)
- FF&E purchasing, coordination and installation management
- 3D renderings, animation or display models
- As-Builts or Record Drawings
- Fast-tracking or multiple “For Construction” sets
- Site visits in addition to those listed above are billed at $1,200 per trip/per person

Hourly Rates: Applicable rates for additional services listed above or for services beyond the scope of work are:

- President $260 per hour
- Senior Principal $225 per hour
- Principal $150 per hour
- Technology $145 per hour
- Senior Architect $125 per hour
- Senior Interior Designer $110 per hour
- Architect $100 per hour
- Interior Designer $90 per hour
- Intern $80 per hour
- Admin. $75 per hour

Reimbursable Expenses: OWNER will reimburse OLC for expenses incurred in the course of delivery of these services at 1.15 times cost. Such expenses include transportation costs, lodging, delivery services, communications, printing, plotting, reproduction, and other direct expenses and shall not exceed amounts indicated without your prior approval. If on-site trips coincide with other work in the same region we may be able to share expenses with other clients.

Billing: Fees, additional services and reimbursable expenses will be billed monthly. Payments are due and payable 30 days from the date of the OLC’s Invoice. Amounts unpaid 45 days after the invoice date shall incur a 1% monthly service charge on the outstanding balance until paid.

Other:
- In any action brought to enforce or contest any provision of this contract or to collect agreed upon fees, the prevailing party will be entitled to collect all costs and expenses incurred in connection with such action, including reasonable attorney’s fees.
- The laws of the State of Colorado shall apply the provisions of this agreement.
- OLC’s liability for any negligent acts, errors or omissions under this contract shall not exceed the total amount of fees incurred.
- Should OWNER terminate this agreement for any reason, OLC shall be reimbursed for services performed to termination date at OLC standard hourly rates or as listed above.
- It is the intent of OWNER and OLC that for Architect-of-Record Services, the terms of this Agreement may be incorporated into a separately executed contract based on the AIA Document B141, "Standard Form of Agreement Between Owner and Architect".

Authorization: By signing below the undersigned affirm that they are authorized to enter into this agreement.

OWNER:

Signature ____________________________ Date: __/__/____

Tom Whitmore, Director For: Rifle Parks and Recreation

OLC: Brian G. Beckler Signature 4/13/17 Date: __/__/____

Brian G. Beckler, Senior Principal For: Ohlson Lavoie Corporation
To: City Manager, Honorable Mayor and Council

From: Tom Whitmore, Parks & Recreation Director

Date: May 8, 2017

Re: Purchase of Elevated Bleacher System for Taughenbaugh Field at Deerfield Park

ACTION: Consider authorizing purchase of elevated aluminum bleacher system for Taughenbaugh Field

BACKGROUND: During Parks and Recreation Strategic Planning of 2016, the Parks and Recreation Advisory Board recommended elevating the priority of an elevated bleacher system for Taughenbaugh Field, to be proposed for the 2017 budget. Funding for the project was approved during the budget process. The proposed system will make use of the irregular space available around the backstop of Taughenbaugh field to seat 298 spectators. The system components will be identical in construction to the Cooper Field System and will include an ADA accessible ramp, 3 stairs, and 5 wheelchair/companion spaces.

During the Cooper Field project, only two companies submitted proposals for Bleachers. CBS Constructors was the low bidder. The other manufacturer was 38% higher. The system design, fabrication, delivery, and installation were completed in a satisfactory manner. Staff wishes to have the consistency of product aesthetics and quality in continuing to have CBS Constructors provide the system for Taughenbaugh Field.

Staff recommends purchase of the elevated bleacher system from CBS Constructors for $58,000.00.

$80,000.00 was budgeted for the project. Remaining funds will be used to cover the cost of the concrete foundation for the bleacher system. The O. & M. Department has agreed to complete site prep and the construction of the foundation as they can schedule.

Thank you,
Tom
## 2017 RATE SCHEDULE

<table>
<thead>
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<th>Personnel / Service</th>
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Travel lodging and meals, equipment rental, copying/blueprints, and other miscellaneous expenses will be billed at cost, including all subcontractors.
To: Mayor Randy Winkler and Council
From: Rick Barth, Public Works Director
CC: Matt Sturgeon, City Manager
Date: May 17, 2017
Re: Construction Management for Waterline Project

Attached is a proposal staff has requested and found acceptable for construction management assistance for the upcoming South Bridge Waterline Project. CRE is the designer of record and it is only logical to have their consulting services for construction of the project they have provided to the City. It is good practice to have the engineer of record involved and with our limited staff between Public Works and Utilities, the consultant has been engaged for their services. Pending all final elements fall into place, construction is anticipated for late summer through fall.

The proposal is for $17,300, billed as needed on an hourly basis and staff recommends award of contract for same.

-RLB
February 23, 2017

Rick Barth, PE  
City of Rifle Engineering Department  
202 Railroad Avenue  
Rifle, Colorado 81650

RE: CRE Job# 1000 City of Rifle – Construction Management  
Highway 13 Water Main Extension – 16” Water Main ±3000 feet

Dear Mr. Barth:

As per our recent correspondence and your request, Colorado River Engineering is providing this proposal to provide construction management related services for the above referenced project.

CRE will be available, upon request, for tasks related to the Construction Management to include:

- Assistance in bid review and contractor selection
- Materials submittal review.
- Site inspections and inspection reports (estimated 120 hrs for a 16 week construction schedule)
- Structural inspections (Glenwood Structural and Civil) ($3,800)
  - Shop drawing review
  - 2 field visits
  - Bidding questions, RFI’s & Miscellaneous

CRE is proposing the tasks identified herein with a schedule of “as needed” or “by request” of the City with the anticipation of 2-3 site visits per week. The budgeted fee for these tasks is **$17,300.00**, on a Time and Materials Basis. The current rate sheet (2017) is attached.

Please notify us if acceptable so we can proceed. Please feel free to contact me directly if there are any questions or if our scope of services needs clarification.

Colorado River Engineering, Inc.

Jeffrey Odor, P.E.  
Staff Engineer
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2017 Schedule of Rates and Reimbursable

Principal-in-Charge ................................................................. $195/hr
Project Manager................................................................. $150/hr
Project Engineer............................................................... $110/hr
Structural Tech/Drafting ................................................... $100/hr
Administrative................................................................. $66/hr
Reimbursable Expenses .................................................. Direct Expenses
Mileage ................................................................. $0.70 per mile
Consultants ................................................................. Direct Expenses
In-house Letter & Legal copies...............................$0.10/sheet
(Large orders only)
In-house Engineering Size Prints (D size)..................$2.70/sheet
(Large orders only)