

**CITY OF WHEAT RIDGE, COLORADO  
INTRODUCED BY COUNCIL MEMBER POND**

**Council Bill No. 08-2015  
Ordinance No. 1570**

**Series 2015**

**TITLE: AN ORDINANCE AUTHORIZING AND APPROVING A LEASE  
PURCHASE FINANCING AGREEMENT FOR SOLAR PANELS WITH  
ALPINE BANK AND, IN CONNECTION THEREWITH, CERTAIN  
RELATED DOCUMENTS AND TRANSACTIONS**

**WHEREAS**, the City of Wheat Ridge, Colorado ("City") is a home rule municipality and political subdivision of the State of Colorado (the "State"); and

**WHEREAS**, the City Council of the City (the "Council") wishes to participate in the Boulder County CEC Solar Array with the acquisition of 972 solar panels therein (collectively, the "Project"); and

**WHEREAS**, to finance the Project, the Council now desires to cause Alpine Bank (the "Bank") to purchase certain solar panels (the "Leased Property") and further desires to lease the Leased Property from the Bank, subject to annual appropriation by the Council, with an option to purchase the Leased Property, pursuant to a Lease Purchase Agreement with the Bank (the "Lease"); and

**WHEREAS**, the Council is authorized to enter into the Lease to lease from the Bank, with an option to purchase the same, the Bank's interest in the Leased Property as provided in such Lease, pursuant to Section 1.3 of the Home Rule Charter and state law, including C.R.S. § 31-15-801 et seq.; and

**WHEREAS**, the Lease shall expire on December 31 of any City fiscal year (a "Fiscal Year") if the City has, on such date, failed, for any reason, to appropriate sufficient amounts authorized and directed to be used to pay all Base Rentals (as defined in the Lease) scheduled to be paid and all Additional Rentals (as defined in the Lease) estimated to be payable in the next ensuing Fiscal Year, and in certain other circumstances set forth in the Lease, and shall not constitute a mandatory charge or requirement against the City in any ensuing budget year unless the City decides to renew the Lease by appropriating the necessary such amounts; and

**WHEREAS**, in order to implement the transactions described above, the Council desires (a) to authorize and approve the execution and delivery by the City of, and the performance by the City of its obligations under, the Lease and certain other documents described herein; and (b) to authorize, approve, ratify, make findings and take other actions with respect to the foregoing and related matters.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF WHEAT RIDGE, COLORADO:**

**Section 1.** The Council hereby: (a) approves the leasing of the Leased Property from the Bank pursuant to the Lease in exchange for the payment of monthly Base Rental payments and the cost of Additional Rentals as provided in the Lease, (b) approves the Lease, which is presented to the Council in connection with the adoption of this Ordinance in substantially final form; (c) authorizes the Mayor of the City, the Mayor Pro Tem, the City Manager, the Deputy City Manager, and the Finance Director, and all other appropriate officers and employees of the City to execute and deliver the Lease in the form appended hereto with such changes and modifications as are deemed necessary by the City Attorney; and (d) authorizes and directs the performance by the City of its obligations under the Lease in the respective forms in which they are executed and delivered.

**Section 2.** The Council hereby adopts, as if set forth in full herein, all the representations, covenants, agreements, findings, determinations and statements of or by the City set forth in the Lease attached hereto as Exhibit A.

**Section 3.** The officers, employees and agents of the City are authorized and directed to take all action necessary or appropriate to carry out the provisions of this Ordinance and the documents referred to herein and to carry out the transactions described herein or in such documents, including, without limitation, the execution and delivery of such certificates as may reasonably be required by the Bank, relating to, among other matters, the absence of litigation, pending or threatened, and expectations and covenants relating to the exclusion from gross income for federal income tax purposes of the portion of Base Rentals which is designated in the Lease as interest, and any actions and the execution and delivery of any documents necessary or convenient to accomplish the conveyance of the Leased Property to, and acquisition of the Leased Property by, the Bank.

**Section 4.** All actions previously taken by the Council and the officers, employees and agents of the City which are directed toward the transactions described herein or in the documents referred to herein and which are not inconsistent herewith are hereby ratified, approved and confirmed.

**Section 5.** All bylaws, orders, resolutions, and other instruments, or parts thereof, that are in conflict with this Ordinance are hereby repealed, but only to the extent of such conflict. This repealer shall not be construed to revive any bylaw, order, resolution, or other instrument, or part thereof, heretofore repealed

**Section 6.** If any section, paragraph, clause or provision of this Ordinance or any of the documents referred to herein (other than provisions as to the payment of Base Rentals and Additional Rentals by the City during the Lease term, including the requirement that the obligations of the City to pay Base Rentals and Additional Rentals under the Lease are conditioned upon the prior appropriation by the City of amounts for such purposes in accordance with the requirements of the laws of the State, provisions for the quiet enjoyment of the Leased Property by the City during the term of the Lease and provisions for the transfer of the Leased Property to the City or its designee) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

**Section 7.** This Ordinance may be amended only with the prior written consent of the Bank.

**Section 8.** The City's obligations under the Lease shall be annually renewable by the City and expressly subject to annual appropriation by the Council, and such obligations under the Lease shall not constitute a general obligation of the City or indebtedness within the meaning of the Constitution and laws of the State of Colorado. The Lease does not create a multiple fiscal year direct or indirect debt or other financial obligation and does not require voter approval in advance under Section 4(b) of Article X, Section 20 of the Colorado Constitution.

**Section 9.** The Lease will not cause the City to exceed its spending limits under Section 7, Article X, Section 20 of the Colorado Constitution.

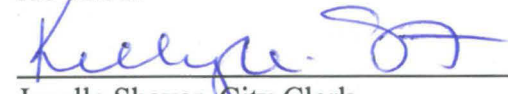
**Section 10.** It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

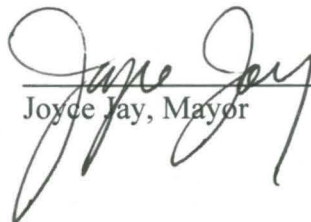
**Section 11. Effective Date.** This Ordinance shall take effect immediately upon adoption at second reading and signature by the Mayor, as permitted by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 6 to 0 on this 23rd day of March, 2015, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for April 13, 2015 at 7:00 p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 8 to 0, this 13<sup>th</sup> day of April, 2015.


ATTEST:

  
\_\_\_\_\_  
Janelle Shaver, City Clerk  
*Kelly K. Stevens, Deputy*

  
\_\_\_\_\_  
Joyce Jay, Mayor

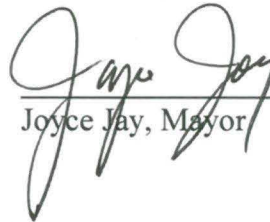


APPROVED AS TO FORM:


  
\_\_\_\_\_  
Gerald Dahl  
City Attorney

First Publication: March 26, 2015  
Second Publication: April 16, 2015  
Wheat Ridge Transcript  
Effective Date: April 13, 2015

Introduced, read by title, and passed on second and final reading on the 13<sup>th</sup> day of April, 2015, signed by the Mayor and ordered published by title in the Wheat Ridge Transcript, a newspaper of general circulation in the City of Wheat Ridge, Colorado, in accordance with the Home Rule Charter.

  
\_\_\_\_\_  
Joyce Jay, Mayor

ATTEST:

  
\_\_\_\_\_  
Janelle Shaver, City Clerk  
Kelly K. Stevens, Deputy





**EXHIBIT A**  
**MUNICIPAL LEASE AND OPTION AGREEMENT**

COMMENCEMENT DATE: April 13, 2015

## MUNICIPAL LEASE AND OPTION AGREEMENT

LESSOR: Alpine Bank and its Successors and Assigns  
1777 Wynkoop Street  
Denver, CO 80202

LESSEE: The City of Wheat Ridge, Colorado  
7500 W. 29th Avenue  
Wheat Ridge, CO 80033

This Municipal Lease and Option Agreement (this "Agreement") entered into between Alpine Bank and its successors and assigns (the "Lessor"), and the City of Wheat Ridge, Colorado (the "Lessee"), a body corporate and politic duly organized and existing under the laws and the Constitution of the State of Colorado (the "State") and the Lessee's charter.

### RECITALS:

WHEREAS, the Lessee has previously entered into a Community Solar Interest Purchase and Energy Agency Agreement (the "CEC Agreement") dated as of March 23, 2015, set forth as Exhibit F attached to this Agreement, pursuant to which the Lessee is participating in a solar garden project in Jefferson County, Colorado, which project is described in Exhibit D hereto (the "Solar Project"); and

WHEREAS, to finance the Solar Project, the Lessee desires to assign all right, title and interest in the CEC Agreement (the "Interests") to the Lessor and the Lessee desires to lease the Interests from the Lessor, subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, the Lessee is authorized under the constitution and laws of the State to enter into this Agreement; and

WHEREAS, the Lessee has delivered or has caused delivery of the following items to the Lessor: (i) a true and correct copy of Ordinance No. 1570 (the "Ordinance"), set forth as Exhibit A attached to this Agreement, (ii) an opinion or opinions of counsel to the Lessee, substantially in the form set forth as Exhibit B attached to this Agreement, with only such changes acceptable to the Lessor, (iii) the certificate of the Lessee set forth as Exhibit C attached to this Agreement, and (iv) all other conditions set forth herein for the entry by the parties hereto have been satisfied;

WHEREAS, the parties herein anticipate that upon execution of this Agreement, Lessor intends to assign its rights and interests under this Agreement to Alpine Bank;

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES OF THE LESSEE

**Section 1.01. Representations and Warranties of the Lessee.** The Lessee represents and warrants, for the benefit of the Lessor and its assignees, as follows:

(a) The Lessee is a public body, corporate and politic, duly organized and existing under the laws and Constitution of the State and the Lessee's charter.

(b) The Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.

(c) The Lessee is authorized under the Constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.

(d) The Lessee has been duly authorized to execute and deliver this Agreement under the terms and provisions of the Ordinance and further represents, covenants and warrants that all requirements have been met and procedures have occurred, in order to ensure the enforceability of the Agreement, and the Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by the Lessee of the Interests thereunder.

(e) The Interests (as hereinafter defined) will have a useful life in the hands of the Lessee that is in excess of the Lease Term.

## ARTICLE II

### DEFINITIONS

**Section 2.01. Definitions.** Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Agreement shall have the respective meanings specified below.

*"Agreement"* means this Municipal Lease and Option Agreement with its Exhibits, which Exhibits are attached hereto and incorporated herein by reference.

*"Commencement Date"* is the date when the term of this Agreement begins and the Lessee's obligation to pay rent accrues, which date shall be the date first above written.

*"Facility"* means, together, the two solar farm facilities located in Jefferson County, Colorado, which are the subject of the Community Solar Interest Purchase and Energy Agency Agreement dated as of \_\_\_\_\_, 2015 by and between the Lessor and CEC Solar.

*"Interests"* means all rights, title and interest in the CEC Agreement including, but not limited to, the rights relating to 972 solar panels at the Facility.

*“Lease Term”* means the period beginning with the Commencement Date and continuing until terminated pursuant to Section 4.01.

*“Purchase Price”* means the amount set forth and so titled in Exhibit E hereto which the Lessee may pay to the Lessor to purchase the Interests as provided under Section 11.01.

*“Rental Payments”* means the basic rental payments payable by the Lessee pursuant to Exhibit E attached to this Agreement.

*“Solar Project Agreements”* means the CEC Agreement and any other related agreements pertaining to the construction, use, operation or maintenance of the Facility.

*“Solar Project”* means the contractual and property rights in the Facility described in Exhibit D and which is the subject of this Agreement, and any and all additions thereto, attachments or accessions thereto and substitutions thereof permitted by this Agreement.

*“State”* means the State of Colorado.

*“Vendor”* means, together, CEC Solar [#1023, LLC], which is the seller, builder, and/or supplier of various elements of the Solar Project.

### ARTICLE III

#### LEASE OF INTERESTS

**Section 3.01. Lease of Interests.** The Lessee hereby assigns the Interests to the Lessor and the Lessor hereby demises, leases and lets to the Lessee, and the Lessee rents, leases and hires from the Lessor, the Interests, in accordance with the provisions of this Agreement, to have and to hold for the Lease Term. Each party hereto acknowledges and represents that to the best of its knowledge, the CEC Agreement is assignable under their terms and is free and clear of all liens and other encumbrances thereon.

**Section 3.02. Use of Funds.** On the Commencement Date, the Lessor shall wire transfer the amount of \$776,628 to the Lessee (constituting the principal funded of \$800,000 minus origination fees of \$23,372) to be applied by the Lessee solely to (a) pay Vendor its contracted cost pursuant to the terms of the CEC Agreement and (b) reimburse the Lessee in an amount not to exceed \$800,000 for its deposit with Vendor with respect to the CEC Agreement.

### ARTICLE IV

#### LEASE TERM

**Section 4.01. Lease Term.** This Agreement shall be in effect and shall commence as of the Commencement Date and will remain in effect throughout the Lease Term. The Lease Term shall be fifteen (15) years commencing January 1 of a calendar year and ending on December 31 of the same calendar year, and ending on April 30, 2030. The Lease Term will terminate upon the first to occur of: (a) the exercise by the Lessee of the option to purchase the Interests under Article XI; (b) the Lessor’s election to terminate this Agreement upon a default under Article XIII; (c) the



payment by the Lessee of all sums required to be paid by the Lessee hereunder; or (d) the occurrence of an Event of Non-appropriation in accordance with Article VI, Section 6.05.

## ARTICLE V

### ENJOYMENT AND USE OF INTERESTS

**Section 5.01. Quiet Enjoyment.** The Lessor hereby agrees not to interfere with the Lessee's quiet use and enjoyment of the Facility (to the extent the Lessee has such rights pursuant to the CEC Agreement) or with the Lessee's economic benefit derived from the CEC Agreement so long as no Event of Default has occurred and is continuing. Without limiting the generality of the foregoing, during the Lease Term, the Lessor shall not encumber the Interests in any manner which would interfere with the Lessee's quiet use and enjoyment of the Facility or with the Lessee's economic benefit derived from the CEC Agreement.

**Section 5.02. Use of the Interests.** During the Lease Term, the Interests will be used by the Lessee only for the purpose set forth in Exhibit C attached to this Agreement or, subject to Article X of this Agreement, performing one or more other governmental or proprietary functions of the Lessee consistent with the permissible scope of the Lessee's authority; provided, however, the Lessee shall have the right to sublet or allow other uses or users of the Interests to the extent permitted by Section 12.02.

**Section 5.03. Right of Inspection.** During the Lease Term, the Lessor and its officers, employees and agents shall have all rights of inspection of the Facility to the extent the Lessee has such rights pursuant to the CEC Agreement.

**Section 5.04. Disclaimer of Warranties.** The Lessor makes no warranty or representation, either expressed or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Interests or the Facility, or any other warranty with respect thereto, and, as to the Lessor, the Lessee leases the Interests "as is". In no event shall the Lessor be liable for any loss or damage, including incidental, indirect, special or consequential damage, in connection with or arising out of this Agreement, or the existence, furnishing, functioning or the Lessee's use of any items or products or services provided for in this Agreement.

**Section 5.05. Vendors Warranties.** To the extent such claims and rights have not been previously asserted, each party to this Agreement may assert claims and rights that the other party may have against any Vendor of any portion of the Facility.

## ARTICLE VI

### RENTAL PAYMENTS

**Section 6.01. Rental Payments.** During the Lease Term, the Lessee shall pay Rental Payments, in immediately available funds, in the amounts and on the due dates set forth in Exhibit E attached to this Agreement, to a Lessor designated account at a bank located within the United States of America as directed in writing by the Lessor to the Lessee at least ten business days prior to any such due date. Lessor hereby designates that Rental Payments shall initially be sent electronically to Alpine Bank, ABA# \_\_\_\_\_, GL Acct# \_\_\_\_\_ Attn: Matt Teeters

days prior to any such due date. Lessor hereby designates that Rental Payments shall initially be sent electronically to Alpine Bank, ABA# \_\_\_\_\_, GL Acct# \_\_\_\_\_ Attn: Matt Teeters Reference: \_\_\_\_\_ until otherwise directed by the Lessor or its Assignee. The Lessee shall pay Rental Payments to the Lessor as aforesaid without notice. The obligation of the Lessee to pay Rental Payments hereunder is a current expense of the Lessee and not a debt of the Lessee in contravention of any applicable limitations or requirements, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the Lessee. No provision of this Agreement is intended, directly or indirectly, (i) to create an obligation of the Lessee to make any Rental Payment or to pay any other amount hereunder in any fiscal year in excess of moneys appropriated by the Lessee for such purpose in such fiscal year, (ii) to create a debt or multiple fiscal-year direct or indirect debt or other financial obligation whatsoever of the Lessee with the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any constitutional or statutory limitation or provision applicable to this Agreement, (iii) to delegate governmental powers of the Lessee, (iv) to make a loan or to pledge the credit or faith of the Lessee or to make the Lessee responsible for any debt or liability of any person, company or corporation within the meaning of Article XI, Section 1 of the Colorado Constitution, or (v) to make a donation or a grant by the Lessee to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 1 of the Colorado Constitution.

**Section 6.02. Interest and Principal Components.** A portion of each Rental Payment is paid as interest, and the balance of each Rental Payment is paid as principal. Exhibit E attached to this Agreement sets forth the interest component and the principal component of each Rental Payment during the Lease Term.

**Section 6.03. Rental Payments to be Unconditional.** Except as provided in Article IV and this Article VI, the obligations of the Lessee to make Rental Payments, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, notwithstanding any dispute between the Lessee and the Lessor, any Vendor or any other person. The Lessee shall not assert any right of set-off or counterclaim against its obligation to make payments under this Agreement.

**Section 6.04. Continuation of Lease Term by the Lessee.** Subject to Sections 6.01 and 6.05, the Lessee intends to do all things lawfully within its power to obtain and maintain funds from which the Rental Payments may be made.

**Section 6.05. Non-appropriation.** Notwithstanding any provision of this Agreement to the contrary, (i) payment of Rental Payments and any other amounts by the Lessee under this Agreement will constitute currently appropriated expenditures of the Lessee and may be paid only from legally available funds appropriated by the Lessee for payment thereof; (ii) the Lessee's obligations under this Agreement will be subject to its annual right to terminate this Agreement upon the occurrence of an Event of Non-appropriation; and (iii) the Lessee will be under no obligation to exercise its option to purchase the Interests pursuant to Section 11.01 hereof. An Event of Non-appropriation shall be deemed to have occurred if: (a) on December 31 in any fiscal year of the Lessee, sufficient funds are not appropriated by the Lessee for the Rental Payments due in the ensuing fiscal year, (b) by any date in a fiscal year on which the sum of the Rental Payments and other amounts are due hereunder exceeds the amount that the Lessee has

appropriated for the payment thereof and any other lawfully available moneys available for the payment thereof, the Lessee shall have at such time not appropriated additional funds for the payment of such Rental Payments and other amounts, or (c) an event described in Section 9.01 shall have occurred, the Lessee is required under Section 9.02 to fund costs of any repair, restoration, modification or replacement of the Facility or to purchase the Facility as contemplated thereby, and the Lessee has not appropriated amounts sufficient to meet such requirement by December 31 of the fiscal year in which the deficiency giving rise to such requirement becomes apparent to the Lessee. The Lessee shall promptly deliver notice of the occurrence of an Event of Non-appropriation to the Lessor. Upon the occurrence of an Event of Non-appropriation or an Event of Default, the obligations of the Lessee under this Agreement shall terminate and the Lessor may reclaim possession of the Interests, and, in such event, the Lessee shall within three (3) days of the Event of Non-appropriations (i) peacefully deliver all title and interests in the Interests to the Lessor, and (ii) notify the Vendor and Xcel Energy that ownership rights and electricity production from the CEC Agreement shall be credited to the Lessor from the date of the Event of Non-appropriation.

## **ARTICLE VII**

### **TITLE TO INTERESTS; LIENS AND ENCUMBRANCES**

**Section 7.01. Ownership of the Interests.** During the term of this Agreement, pursuant to the assignment under Section 3.01, the Interests shall be held in the name of the Lessor, and, except for its leasehold estate therein and subject to its option to acquire the Interests pursuant to Section 11.01, the Lessee shall not have any interest therein.

**Section 7.02. Liens and Encumbrances.** The Lessee shall promptly discharge any liens placed on the Interests and all additions, attachments, accessions and substitutions thereto, other than those created by the Lessor.

**Section 7.03. CEC Agreement.** The Lessee hereby agrees that it shall not, without the prior written consent of the Lessor, amend, modify or supplement the CEC Agreement.

## **ARTICLE VIII**

### **MAINTENANCE; MODIFICATION; TAXES; INSURANCE AND OTHER CHARGES**

**Section 8.01. Maintenance of Facility.** The Lessee will enforce on behalf of itself and Lessor, at the Lessee's own cost and expense, all provisions of the Solar Project Agreements to keep the Facility in good repair, working order and condition, to the extent that the Lessee has any such obligations pursuant to the Solar Project Agreements.

**Section 8.02. Taxes, Other Governmental Charges and Utility Charges.** In the event that the use, possession or acquisition of the Interests is found to be subject to taxation in any form (except for income taxes of the Lessor), government charges or utility charges and expenses, the Lessee will pay all such taxes and charges as they come due. The Lessee shall be responsible for submitting all paperwork with any governmental body or utility company

pertaining to the exemption from taxes or utility fees for any portion of the Interests, as deemed appropriate by the Lessee.

**Section 8.03. Provisions Regarding Insurance.** All Net Proceeds (defined in Section 9.01) from casualty losses on the Facility pursuant to the Solar Project Agreements which may be received by the Lessee shall be payable as hereinafter provided in this Agreement.

**Section 8.04. Advances.** In the event the Vendor shall fail to maintain the full insurance coverage required by the Solar Project Agreements or shall fail to keep the Facility in good repair and operating condition, the Lessor may (but shall be under no obligation) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are reasonably necessary and provide for payment thereof, but only to the extent permitted by the Solar Project Agreements by virtue of Lessor's ownership of the Interests; all amounts so advanced therefore by the Lessor shall be repaid by the Lessee to the Lessor, together with interest thereon at the rate specified for interest on late payments in Section 13.05 hereof.

**Section 8.05. Modifications.** Without the prior express written consent of the Lessor, the Lessee shall not make any material alterations, modifications or attachments to the Interests or the Facility; provided, however, the Lessee may make alterations, modifications or attachments to the Facility, without the consent of the Lessor, if such modifications (i) are consistent with the use of the Lessee's use of the Interests described in Exhibit C hereto, and (ii) the value of the Interests after the completion thereof shall not be less than the value of the Interests prior thereto and, if materially higher, shall not cause the Lessee to breach Article X of this Agreement or to violate Article X, Section 20 or other applicable provisions of the Colorado Constitution.

## ARTICLE IX

### DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

**Section 9.01. Damage, Destruction and Condemnation.** If (a) the Facility or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of the Facility or any part thereof is taken under the exercise of the power of eminent domain, the Lessee and the Lessor will cause the Net Proceeds of any insurance claim or condemnation award which is payable to the Lessee or the Lessor to be applied either to the prompt repair, restoration, modification or replacement of the Facility consistent with the terms of the CEC Agreement or, at the Lessee's option, to the payment in full of the Purchase Price. Any balance of the Net Proceeds remaining after such work or purchase has been completed shall be paid to the Lessee.

For purposes of Article VIII, Section 8.03, and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorney's fees) incurred in the collection of such claims or award.



**Section 9.02. Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or replacement, the Lessee, subject to Sections 6.01 and 6.05, shall either (a) complete the work and pay any cost in excess of the amount of Net Proceeds (to the extent it is permitted to do so by the Solar Project Agreements), or (b) the Lessee shall pay to the Lessor the Purchase Price. The amount of the Net Proceeds in excess of the then applicable Purchase Price, if any, may be retained by the Lessee. If by December 31 of the fiscal year of the Lessee in which the loss, damage or destruction of the Facility occurred (or December 31 of any subsequent fiscal year of the Lessee during which the insufficiency of Net Proceeds to repair or replace the Facility becomes apparent), the Lessee has not appropriated amounts sufficient to proceed under either clause (a) or (b) of this Section, then an Event of Non-appropriations shall be deemed to have occurred.

## **ARTICLE X**

### **RESERVED**

## **ARTICLE XI**

### **OPTION TO PURCHASE**

**Section 11.01. Purchase Rights.** Subject to Sections 6.01 and 6.05, the Lessee shall be entitled to purchase the Interests and the 972 solar panels associated with the Interests at any time after July 13, 2019:

(a) Upon payment in full of all Rental Payments in accordance with Exhibit E attached to this Agreement and all other amounts due hereunder; or

(b) Provided there is no Event of Default hereunder and upon written notice delivered at least 30 days in advance, the Lessee may purchase the Interests at any time by paying to the Lessor (1) the next Rental Payment then coming due, (2) the Remaining Balance as set forth in Exhibit E, and (3) all other amounts then due hereunder.

Upon the Lessee's exercise of its purchase rights pursuant to this Section 11.01, and Lessee's payment to Lessor of all amounts due pursuant to this Agreement, the Lessor shall execute and deliver to the Lessee, or upon its order, a termination of the assignment set forth in Section 3.01 and all other documents deemed reasonably necessary by the Lessee to effect the assignment, transfer and conveyance of the Interests, free and clear of any liens or encumbrances (other than this Agreement), and the Lessor shall terminate any security interests created by this Agreement. The Lessor shall not be responsible to pay any costs or expenses incurred by the Lessee in connection with its exercise of such purchase option or the closing for the assignment, transfer and conveyance of title and release of any and all such security interests.

Unless the Lessee otherwise provides written notice to the Lessor to the contrary at least thirty days prior to the end of the Lease Term, the Lessee shall be deemed to exercise its option to purchase the Interests upon payment of the final Rental Payment due hereunder as set forth in Exhibit E attached to this Agreement, and the closing for the assignment, transfer and conveyance of the Interests to the Lessee shall occur upon such final payment.

## ARTICLE XII

### ASSIGNMENT, SUBLEASING, INDEMNIFICATION, MORTGAGING AND SELLING

#### **Section 12.01. Assignment or Sale by the Lessor.**

(a) This Agreement, and the obligations of the Lessee to make payments hereunder, may be sold, assigned or otherwise disposed of in whole or in part to one or more successors, grantors, holders, assignees or subassignees by the Lessor; provided, however, that such assignment shall be limited to institutional investor(s) or accredited investor(s), as defined in the Securities Act of 1933 (including amendments thereto). Upon any sale, disposition, assignment or reassignment, the Lessee shall be provided with a notice of said assignment.

(b) The Lessee agrees to make all payments to the assignee designated in the assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever that the Lessee may from time to time have against the Lessor or any Vendor. The Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by the Lessor or assignee to protect its ownership of the Interests and in this Agreement.

(c) The Parties hereto acknowledge that upon execution of this Agreement, Lessor intends to assign its rights and interests under this Agreement to Alpine Bank.

**Section 12.02. Sale, Assignment or Subleasing by the Lessee.** This Agreement and the leasehold estate of the Lessee in the Interests may not be sold, assigned or encumbered by the Lessee without the prior written consent of the Lessor.

**Section 12.03. Release and Indemnification Covenants.** To the extent permitted by the laws and Constitution of the State, and subject to Sections 6.01 and 6.05 of this Agreement, the Lessee shall protect, hold harmless and indemnify the Lessor from and against all liability, obligations, losses, claims and/or damages arising out of its ownership of the Interests, including related counsel fees, penalties and interest but excluding any such liability, obligations, losses, claims, damages, counsel fees, penalties or interest resulting from Lessor's intentional or negligent acts. If the Lessee has any pecuniary obligation under this Section 12.03 to indemnify the Lessor, the Lessee shall pay the amount required by such obligation as additional rent to the Lessor upon 30 days written demand, but no later the last day of the fiscal year in which such obligation arises, and payment of any such obligation shall be subject to appropriation by the Lessee of funds sufficient therefor in such fiscal year, with a failure to appropriate sufficient funds causing an Event of Non-appropriation under Section 6.05 hereof.

The Lessor agrees that, upon the receipt of notice of the commencement of any action against it in respect to which indemnity may be sought on account of this Section, it shall promptly give written notice of the commencement thereof to the Lessee, but the omission to do so shall not relieve the Lessee of any liability it may have to the Lessor otherwise than on account of this Section, except to the extent timely notice would have reduced or avoided such liability. In case such notice of any such action shall be so given, the Lessee shall be entitled to

participate at its own expense in the defense or, if it so elects, to assume the defense of such action, in which event such defense shall be conducted by counsel chosen by the Lessee, reasonably satisfactory to the Lessor, and shall bear the fees and expenses of such action. The Lessor shall have the right to retain separate counsel in any such action and to participate in the defense thereof, but shall bear the fees and expenses of such counsel, unless (i) the Lessee shall have specifically authorized in writing the retaining of such counsel, in which case the Lessee shall bear the fees and expenses of such counsel; or (ii) the parties to such action include the Lessor and the Lessee and the Lessor reasonably determines that a conflict of interest exists between it and the Lessee in the context of such action, in which case the Lessee shall not be entitled to assume the defense of such action without the prior written consent of the Lessor and, if the Lessor does not consent and engages separate counsel, the Lessee shall bear the fees and expenses of such separate counsel. The Lessee shall not be liable hereunder for any settlement effected without its prior written consent.

Subject to the foregoing, including without limitation the applicability of Sections 6.01 and 6.05 hereof, the obligations arising under this Section shall survive the termination of this Agreement. To the extent any obligation of the Lessee under this Section 12.03 shall be construed by a court of competent jurisdiction to be a violation of the laws or Constitution of the State, such obligation shall be void.

## **ARTICLE XIII**

### **EVENTS OF DEFAULT AND REMEDIES**

**Section 13.01. Events of Default.** The following constitute “Events of Default” under this Agreement:

(a) failure by the Lessee to pay any Rental Payment or other payment required to be paid hereunder when due; or

(b) failure by the Lessee to observe and perform any other covenant, condition or agreement on its part to be observed or performed for a period of 30 days after written notice is given to the Lessee by the Lessor, specifying such failure and requesting that it be remedied; provided, however, that if the failure stated in such notice cannot be corrected within such 30-day period, the Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the default is corrected; or

(c) federal or state court proceedings which involve (i) the filing of a petition in bankruptcy by or against the Lessee and the continuance of any such filing unstayed and in effect for a period of 60 consecutive days; (ii) failure by the Lessee to lift within 60 days any execution, garnishment or attachment of such consequence as would impair the ability of the Lessee to carry on its governmental functions; (iii) the entry by the Lessee into an agreement of composition with creditors; (iv) the approval by a court of competent jurisdiction of any adjustment of indebtedness of the Lessee and the continuance of any such order unstayed and in effect for a period of 60 days; or (v) the dissolution or liquidation of the Lessee.

The foregoing provisions of this Section 13.01 are subject to the provisions of Article IV and Article VI hereof (including, but not limited to, Sections 6.01 and 6.05).

**Section 13.02. Remedies on Default.** Whenever any Event of Default shall have occurred and be continuing, the Lessor shall have the right, at its sole option without any further demand or notice, to take any one or any combination of the following remedial steps:

- (a) Terminate this Agreement and retake possession of the Interests; or
- (b) Use, sell, lease, or make other disposition of the Interests for use over a term in a commercially reasonable manner, all for the account of the Lessor; provided that, subject to Sections 6.01 and 6.05, the Lessee shall remain directly liable for the amount actually appropriated for the purchase or rental of the Interests and unpaid by the Lessee during the current fiscal year, less any amount received under any lease or sublease during same fiscal year; or
- (c) Proceed by appropriate court action to enforce performance by the Lessee of the applicable covenants of this Agreement or to recover from the Lessee for the breach thereof; provided, however, a judgment requiring a payment of money by the Lessee shall be limited as set forth in subparagraph (b) above.

The Lessor shall apply the proceeds of any sale, lease, sublease or other disposition of the Interests or other moneys received pursuant to this Section 13.02 in the following manner:

FIRST, to pay the Lessor (i) the amount of all unpaid Rental Payments, if any, which are then due and owing, together with interest and late charges thereon, to the date the Lessee relinquishes the Interests, (ii) if the Lessee has duly exercised its option to purchase the Interests pursuant to Section 11.01, the then applicable Purchase Price (taking into account the payment of past due Rental Payments as aforesaid) then due, and (iii) any other amounts due hereunder, provided that the Lessee has specifically appropriated moneys to pay such amounts; and

SECOND, to use the remainder of funds as Lessor, in its sole discretion, may decide.

All of the Lessee's right, title and interest in the Interests, the possession of which is retaken by the Lessor upon the occurrence of an Event of Default or Event of Non-appropriation, shall terminate immediately upon such repossession.

**Section 13.03. Surrender of Interests.** Upon an Event of Default, the Lessee agrees to surrender the Interests at the Lessee's sole cost and expense, in the same manner provided in respect of recovery after an Event of Non-appropriation in accordance with Article VI, Section 6.05.

**Section 13.04. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity.



**Section 13.05. Late Charge; Interest on Late Payment.** Any Rental Payment not paid by the due date thereof shall bear a late charge on the outstanding amounts due. Any unpaid Rental Payment or other amount payable by the Lessee to the Lessor hereunder, shall bear interest at the lesser of (a) the rate payable on the principal portion of the Purchase Price (5.75%) plus five full percentage points per annum, or (b) the maximum rate allowed by law.

**Section 13.06. Force Majeure.** If by reason of force majeure the Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of the Lessee contained in Article VI and Article VIII Section 8.03 hereof, the Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts or other industrial disturbances; act of public enemies, orders or restraints of any kind of the government of the United States of America or the State or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; tornados; droughts; floods; or explosions.

## **ARTICLE XIV**

### **MISCELLANEOUS**

**Section 14.01. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses set forth on the first page hereof.

**Section 14.02. Governmental Immunity.** Notwithstanding any other provisions of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101 et seq. (the "Governmental Immunity Act"), Colorado Revised Statutes, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the Lessee, its departments, institutions, agencies, boards, officials and employees, is subject to the Governmental Immunity Act and other applicable law.

**Section 14.03. Sovereign Powers.** Nothing in this Agreement shall be construed as delegating, relinquishing, diminishing or otherwise restricting any of the sovereign powers or immunities of the Lessee. Nothing in this Agreement shall be construed to require the Lessee to use the Interests other than as lessee pursuant to and in accordance with this Agreement, to appropriate funds for the payment of its obligations hereunder, or to exercise its right to purchase the Interests as provided in Section 11.01 hereof.

**Section 14.04. Continuing Disclosure.** The Lessee covenants and agrees to provide the Lessor audited financial statements of the Lessee within 210 days of the close of the Lessee's fiscal year and to provide updated information regarding the Lessee that was initially provided the Lessor in order to persuade the Lessor to enter into this Agreement. In regards to any outstanding bonds, notes, certificates, capital leases (including this Agreement), or other obligation of the Lessee, the Lessee shall promptly notify the Lessor of (a) a delinquency or default of the payment of principal or interest or non-monetary default, (b) unscheduled draws of

a debt service reserve funds or credit enhancement (c) a substitution of a credit provider or its failure to perform, (d) the modification of the rights of holders of the Lessee's debt, (e) debt redemption or defeasance, (f) the release, sale or substitution of collateral securing the repayment of its debt, and (g) a change in the Lessee's published credit ratings. In addition, during the period this Agreement is in force, the Lessee will annually provide the Lessor with current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of the Lessee to continue this Agreement as may be reasonably requested by the Lessor or its assignee.

**Section 14.05. Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Lessor and the Lessee and their respective successors and assigns.

**Section 14.06. Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 14.07. Amendments.** All amendments hereto must be in writing and executed and delivered by the respective parties hereto.

**Section 14.08. Execution in Counterparts.** This Agreement may be executed in several counterparts.

**Section 14.09. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State.

**Section 14.10. Captions.** The captions or heading in the Agreement are for convenience only and no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

**Section 14.11. Entire Agreement.** This Agreement constitutes the entire agreement between the Lessor and the Lessee. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, specified herein regarding this Agreement or the Interests leased hereunder. Any terms and conditions of any purchase order or other document (with the exception of Supplements) submitted by the Lessee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on the Lessor and will not apply to this Agreement. The Lessee by the signature below of its authorized representative acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and conditions.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Lessor has executed this Agreement in its corporate name, and the Lessee has caused this Agreement to be executed in its corporate name, attested by its duly authorized officers. All of the above occurred as of the date first written on the heading hereof.

LESSEE: THE CITY OF WHEAT  
RIDGE, COLORADO

By: Joyce Jay  
Title: Joyce Jay, Mayor

Approved as to form:

By: Gerald Dahl, City Attorney

LESSOR: ALPINE BANK

By: \_\_\_\_\_  
Title: \_\_\_\_\_, Vice President

Attest:

By: Kelly K. Stevens  
Title: Janelle Shaver, City Clerk  
Kelly K. Stevens,  
Deputy



[Signature page to the Municipal Lease and Option Agreement]

**EXHIBIT A**  
**AUTHORIZING ORDINANCE**



**CITY OF WHEAT RIDGE, COLORADO**  
**INTRODUCED BY COUNCIL MEMBER POND**  
**Council Bill No. 08-2015**  
**Ordinance No. 1570**

**Series 2015**

**TITLE: AN ORDINANCE AUTHORIZING AND APPROVING A LEASE  
PURCHASE FINANCING AGREEMENT FOR SOLAR PANELS WITH  
ALPINE BANK AND, IN CONNECTION THEREWITH, CERTAIN  
RELATED DOCUMENTS AND TRANSACTIONS**

**WHEREAS**, the City of Wheat Ridge, Colorado (“City”) is a home rule municipality and political subdivision of the State of Colorado (the “State”); and

**WHEREAS**, the City Council of the City (the “Council”) wishes to participate in the Boulder County CEC Solar Array with the acquisition of 972 solar panels therein (collectively, the “Project”); and

**WHEREAS**, to finance the Project, the Council now desires to cause Alpine Bank (the “Bank”) to purchase certain solar panels (the “Leased Property”) and further desires to lease the Leased Property from the Bank, subject to annual appropriation by the Council, with an option to purchase the Leased Property, pursuant to a Lease Purchase Agreement with the Bank (the “Lease”); and

**WHEREAS**, the Council is authorized to enter into the Lease to lease from the Bank, with an option to purchase the same, the Bank’s interest in the Leased Property as provided in such Lease, pursuant to Section 1.3 of the Home Rule Charter and state law, including C.R.S. § 31-15-801 et seq.; and

**WHEREAS**, the Lease shall expire on December 31 of any City fiscal year (a “Fiscal Year”) if the City has, on such date, failed, for any reason, to appropriate sufficient amounts authorized and directed to be used to pay all Base Rentals (as defined in the Lease) scheduled to be paid and all Additional Rentals (as defined in the Lease) estimated to be payable in the next ensuing Fiscal Year, and in certain other circumstances set forth in the Lease, and shall not constitute a mandatory charge or requirement against the City in any ensuing budget year unless the City decides to renew the Lease by appropriating the necessary such amounts; and

**WHEREAS**, in order to implement the transactions described above, the Council desires (a) to authorize and approve the execution and delivery by the City of, and the performance by the City of its obligations under, the Lease and certain other documents described herein; and (b) to authorize, approve, ratify, make findings and take other actions with respect to the foregoing and related matters.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF WHEAT RIDGE, COLORADO:**

**Section 1.** The Council hereby: (a) approves the leasing of the Leased Property from the Bank pursuant to the Lease in exchange for the payment of monthly Base Rental payments and the cost of Additional Rentals as provided in the Lease, (b) approves the Lease, which is presented to the Council in connection with the adoption of this Ordinance in substantially final form; (c) authorizes the Mayor of the City, the Mayor Pro Tem, the City Manager, the Deputy City Manager, and the Finance Director, and all other appropriate officers and employees of the City to execute and deliver the Lease in the form appended hereto with such changes and modifications as are deemed necessary by the City Attorney; and (d) authorizes and directs the performance by the City of its obligations under the Lease in the respective forms in which they are executed and delivered.

**Section 2.** The Council hereby adopts, as if set forth in full herein, all the representations, covenants, agreements, findings, determinations and statements of or by the City set forth in the Lease attached hereto as Exhibit A.

**Section 3.** The officers, employees and agents of the City are authorized and directed to take all action necessary or appropriate to carry out the provisions of this Ordinance and the documents referred to herein and to carry out the transactions described herein or in such documents, including, without limitation, the execution and delivery of such certificates as may reasonably be required by the Bank, relating to, among other matters, the absence of litigation, pending or threatened, and expectations and covenants relating to the exclusion from gross income for federal income tax purposes of the portion of Base Rentals which is designated in the Lease as interest, and any actions and the execution and delivery of any documents necessary or convenient to accomplish the conveyance of the Leased Property to, and acquisition of the Leased Property by, the Bank.

**Section 4.** All actions previously taken by the Council and the officers, employees and agents of the City which are directed toward the transactions described herein or in the documents referred to herein and which are not inconsistent herewith are hereby ratified, approved and confirmed.

**Section 5.** All bylaws, orders, resolutions, and other instruments, or parts thereof, that are in conflict with this Ordinance are hereby repealed, but only to the extent of such conflict. This repealer shall not be construed to revive any bylaw, order, resolution, or other instrument, or part thereof, heretofore repealed

**Section 6.** If any section, paragraph, clause or provision of this Ordinance or any of the documents referred to herein (other than provisions as to the payment of Base Rentals and Additional Rentals by the City during the Lease term, including the requirement that the obligations of the City to pay Base Rentals and Additional Rentals under the Lease are conditioned upon the prior appropriation by the City of amounts for such purposes in accordance with the requirements of the laws of the State, provisions for the quiet enjoyment of the Leased Property by the City during the term of the Lease and provisions for the transfer of the Leased Property to the City or its designee) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

**Section 7.** This Ordinance may be amended only with the prior written consent of the Bank.

**Section 8.** The City's obligations under the Lease shall be annually renewable by the City and expressly subject to annual appropriation by the Council, and such obligations under the Lease shall not constitute a general obligation of the City or indebtedness within the meaning of the Constitution and laws of the State of Colorado. The Lease does not create a multiple fiscal year direct or indirect debt or other financial obligation and does not require voter approval in advance under Section 4(b) of Article X, Section 20 of the Colorado Constitution.

**Section 9.** The Lease will not cause the City to exceed its spending limits under Section 7, Article X, Section 20 of the Colorado Constitution.

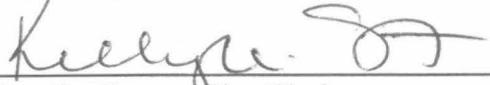
**Section 10.** It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

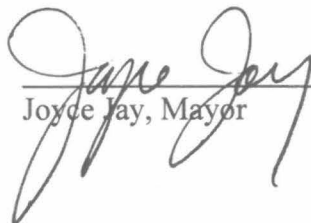
**Section 11. Effective Date.** This Ordinance shall take effect immediately upon adoption at second reading and signature by the Mayor, as permitted by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 6 to 0 on this 23rd day of March, 2015, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for April 13, 2015 at 7:00 p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 8 to 0, this 13<sup>th</sup> day of April, 2015.

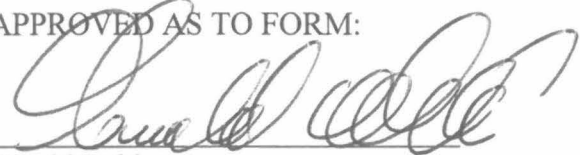
ATTEST:

  
\_\_\_\_\_  
Janelle Shaver, City Clerk  
Kelly K. Stevens, Deputy

  
\_\_\_\_\_  
Joyce Jay, Mayor

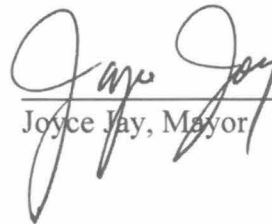


APPROVED AS TO FORM:

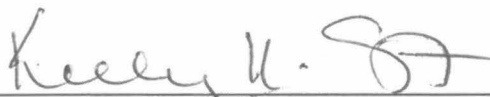
  
\_\_\_\_\_  
Gerald Dahl  
City Attorney

First Publication: March 26, 2015  
Second Publication: April 16, 2015  
Wheat Ridge Transcript  
Effective Date: April 13, 2015

Introduced, read by title, and passed on second and final reading on the 13<sup>th</sup> day of April, 2015, signed by the Mayor and ordered published by title in the Wheat Ridge Transcript, a newspaper of general circulation in the City of Wheat Ridge, Colorado, in accordance with the Home Rule Charter.

  
Joyce Jay, Mayor

ATTEST:

  
Janelle Shaver, City Clerk  
Kelly K. Stevens, Deputy



**EXHIBIT A**  
**MUNICIPAL LEASE AND OPTION AGREEMENT**

**EXHIBIT B**

**OPINION OF SPECIAL COUNSEL TO THE CITY OF WHEAT RIDGE**





March 18, 2015

Gerald E. Dahl

Alpine Bank  
1777 Wynkoop Street  
Denver, CO 80202

**City of Wheat Ridge, Colorado  
2015 Lease Purchase Agreement**

Ladies and Gentlemen:

We have been engaged as counsel to the City of Wheat Ridge Colorado (the "Lessee" or the "City") in connection with the above-captioned Lease Purchase Agreement (the "Agreement"), dated as of April 13, 2015, by and between the City of Wheat Ridge and Alpine Bank (the "Bank"). Capitalized terms used but not defined herein have the meanings assigned to them in the Agreement.

We have examined the Agreement, the Authorizing Ordinance, the City Charter, the Constitution and the laws of the State of Colorado (the "State") and such certified proceedings, certificates, documents, opinions and other papers as we deem necessary to render this opinion. As to questions of fact material to our opinion, we have relied upon the certified proceedings and other certificates of public officials and others furnished to us without undertaking to verify the same by independent investigation. We have assumed the due authorization, execution and delivery of the Agreement by the Bank.

Based upon the foregoing, we are of the opinion that:

1. The Agreement is a legal, valid and binding obligation of the City, enforceable in accordance with its terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State of Colorado and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America.

2. The proceedings of the City's governing members approving Agreement and authorizing their execution, issuance and delivery on behalf of the City, and authorizing the City to undertake and complete the acquisition of the solar panels (the "Project") have been or will be duly and lawfully adopted and authorized in accordance with applicable Colorado law, (hereinafter collectively called the "Authorizing Ordinance"), which Authorizing Ordinance was or will be duly approved and published in accordance with applicable Colorado law, at a meeting or meetings which were or will be duly called pursuant to necessary public notice and held in accordance with applicable Colorado law, and at which quorums were present acting throughout.

*Attorneys at Law*

The Historic Sugar Building

1530 16th Street, Suite 200 Denver, Colorado 80202 Main 303.493.6670 Fax 303.477.0965

Direct 303.493.6686 gdahl@mdkrlaw.com

3. To the best of my knowledge, after such investigation as I have deemed appropriate, the authorization, execution and delivery of the Agreement by the City, the observation and performance by the City of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of the Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the City or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing Bond Ordinance, trust agreement, indenture, mortgage, deed of trust or other agreement to which the City is a party.

4. To the best of my knowledge, after such investigation as I have deemed appropriate, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization or existence of the City or the validity, legality or enforceability of the Agreement or the undertaking or completion of the Project.

This opinion is given solely as of the date hereof and we assume no obligation to update, revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

This opinion is solely for the benefit of the addressee in connection with the execution and delivery of the Agreement and may not be relied upon by the City, Bank or any other person or for any other purpose without our express written consent.

Respectfully submitted,

Murray Dahl Kuechenmeister & Renaud, LLP

By:   
Gerald E. Dahl

**EXHIBIT C**  
**CERTIFICATE OF LESSEE**

I, Janelle Shaver, am a duly authorized representative and acting Clerk of the City of Wheat Ridge. Under that certain Municipal Lease and Option Agreement dated \_\_\_\_\_, 2015 with \_\_\_\_\_ as the Lessor (the "Agreement"), I hereby certify as follows and in accordance with the requirements of the Agreement. Capitalized terms used herein have the same meaning as in the Agreement:

**A. INCUMBENCY OF OFFICERS AND SIGNATURES:**

I have custody of the records of the Lessee, and the following officer of the Lessee is duly appointed, holds the office set forth opposite his name, and the signature opposite his name is true and correct. Where required, his signature has been filed with the appropriate officials of the State, and such individual has the authority to enter into the Agreement on behalf of the Lessee:

<u>Name</u>	<u>Title/Office</u>	<u>Signature</u>
	City Manager	_____
	Finance Director	_____

**B. ESSENTIAL USE:**

1. The Lessee will use the Interests for the governmental purpose of gaining electricity credits to provide electricity to public buildings used by the Lessee to run its operations and conduct governmental business.

2. The use of electricity is essential for the functioning of the Lessee and is immediately needed by the Lessee. Such need is neither temporary nor expected to diminish during the Lease Term. The Interests are expected to be used by the Lessee for a period in excess of the Lease Term.

**C. CERTIFICATE OF APPROPRIATIONS:**

1. Monies for all rental payments to be made under the Lease for the fiscal year ending December 31, 2015, are available from unexhausted and unencumbered appropriations and/or funds within the Lessee's budget for such fiscal year; and that appropriations and/or funds have been designated for the payment of those rental payments that may come due under the Agreement in such fiscal year.

This Certificate is based upon facts, circumstances, estimates and expectations of the Lessee as of the date on which the Agreement was executed, and to the best of my knowledge and belief, as of this date, such facts, circumstances and estimates are true and correct and such expectations are reasonable.

IN WITNESS WHEREOF, I have executed and delivered this certificate as of the \_\_\_\_  
day of \_\_\_\_\_, 2015.

---

City Clerk

## **EXHIBIT D**

### **DESCRIPTION OF THE SOLAR PROJECT**

The City has entered into the CEC Agreement to finance the acquisition of electric generating capacity and actual electric production of 972 solar panels located in a community solar array in Jefferson County, Colorado, resulting in energy credits from its utility provider, Public Service Company of Colorado d/b/a Xcel Energy, for power generated by the solar panels in connection with providing electricity to public buildings used by the City to conduct its governmental business.

**EXHIBIT E**

Rental Payments and Optional Purchase Price  
Municipal Lease Dated \_\_\_\_\_, 2015  
(based on a taxable interest rate of 5.750%)

(attached)



## AMORTIZATION SCHEDULE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$800,000.00	04-01-2015	04-01-2030			CAA9253	315	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "*****" has been omitted due to text length limitations.							

**Borrower:** CITY OF WHEAT RIDGE  
7500 W 29TH AVE  
WHEAT RIDGE, CO 80033-0000

**Lender:** Alpine Bank, A Colorado Banking Corporation  
Alpine Bank Union Station  
400 7th Street South  
Rifle, CO 81650  
(800) 551-6098

Disbursement Date: April 1, 2015  
Interest Rate: 5.750

Repayment Schedule: Installment  
Calculation Method: 365/360 U.S. Rule

Payment Number	Payment Date	Payment Amount	Interest Paid	Principal Paid	Remaining Balance
1	05-01-2015	6,678.02	3,833.33	2,844.69	797,155.31
2	06-01-2015	6,678.02	3,947.03	2,730.99	794,424.32
3	07-01-2015	6,678.02	3,806.62	2,871.40	791,552.92
4	08-01-2015	6,678.02	3,919.29	2,758.73	788,794.19
5	09-01-2015	6,678.02	3,905.63	2,772.39	786,021.80
6	10-01-2015	6,678.02	3,766.35	2,911.67	783,110.13
7	11-01-2015	6,678.02	3,877.48	2,800.54	780,309.59
8	12-01-2015	6,678.02	3,738.98	2,939.04	777,370.55
<b>2015 TOTALS:</b>		<b>53,424.16</b>	<b>30,794.71</b>	<b>22,629.45</b>	
9	01-01-2016	6,678.02	3,849.06	2,828.96	774,541.59
10	02-01-2016	6,678.02	3,835.06	2,842.96	771,698.63
11	03-01-2016	6,678.02	3,451.21	3,226.81	768,471.82
12	04-01-2016	6,678.02	3,805.00	2,873.02	765,598.80
13	05-01-2016	6,678.02	3,668.49	3,009.53	762,589.27
14	06-01-2016	6,678.02	3,775.88	2,902.14	759,687.13
15	07-01-2016	6,678.02	3,640.17	3,037.85	756,649.28
16	08-01-2016	6,678.02	3,746.46	2,931.56	753,717.72
17	09-01-2016	6,678.02	3,731.95	2,946.07	750,771.65
18	10-01-2016	6,678.02	3,597.45	3,080.57	747,691.08
19	11-01-2016	6,678.02	3,702.11	2,975.91	744,715.17
20	12-01-2016	6,678.02	3,568.43	3,109.59	741,605.58
<b>2016 TOTALS:</b>		<b>80,136.24</b>	<b>44,371.27</b>	<b>35,764.97</b>	
21	01-01-2017	6,678.02	3,671.98	3,006.04	738,599.54
22	02-01-2017	6,678.02	3,657.09	3,020.93	735,578.61
23	03-01-2017	6,678.02	3,289.67	3,388.35	732,190.26
24	04-01-2017	6,678.02	3,625.36	3,052.66	729,137.60
25	05-01-2017	6,678.02	3,493.78	3,184.24	725,953.36
26	06-01-2017	6,678.02	3,594.48	3,083.54	722,869.82
27	07-01-2017	6,678.02	3,463.75	3,214.27	719,655.55
28	08-01-2017	6,678.02	3,563.29	3,114.73	716,540.82
29	09-01-2017	6,678.02	3,547.87	3,130.15	713,410.67
30	10-01-2017	6,678.02	3,418.43	3,259.59	710,151.08
31	11-01-2017	6,678.02	3,516.23	3,161.79	706,989.29
32	12-01-2017	6,678.02	3,387.66	3,290.36	703,698.93
<b>2017 TOTALS:</b>		<b>80,136.24</b>	<b>42,229.59</b>	<b>37,906.65</b>	
33	01-01-2018	6,678.02	3,484.29	3,193.73	700,505.20
34	02-01-2018	6,678.02	3,468.47	3,209.55	697,295.65
35	03-01-2018	6,678.02	3,118.46	3,559.56	693,736.09
36	04-01-2018	6,678.02	3,434.96	3,243.06	690,493.03
37	05-01-2018	6,678.02	3,308.61	3,369.41	687,123.62
38	06-01-2018	6,678.02	3,402.22	3,275.80	683,847.82
39	07-01-2018	6,678.02	3,276.77	3,401.25	680,446.57
40	08-01-2018	6,678.02	3,369.16	3,308.86	677,137.71
41	09-01-2018	6,678.02	3,352.77	3,325.25	673,812.46
42	10-01-2018	6,678.02	3,228.68	3,449.34	670,363.12
43	11-01-2018	6,678.02	3,319.23	3,358.79	667,004.33
44	12-01-2018	6,678.02	3,196.06	3,481.96	663,522.37
<b>2018 TOTALS:</b>		<b>80,136.24</b>	<b>39,959.68</b>	<b>40,176.56</b>	
45	01-01-2019	6,678.02	3,285.36	3,392.66	660,129.71
46	02-01-2019	6,678.02	3,268.56	3,409.46	656,720.25
47	03-01-2019	6,678.02	2,937.00	3,741.02	652,979.23
48	04-01-2019	6,678.02	3,233.15	3,444.87	649,534.36
49	05-01-2019	6,678.02	3,112.35	3,565.67	645,968.69
50	06-01-2019	6,678.02	3,198.44	3,479.58	642,489.11
51	07-01-2019	6,678.02	3,078.59	3,599.43	638,889.68

**AMORTIZATION SCHEDULE  
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52	08-01-2019	6,678.02	3,163.39	3,514.63	635,375.05
53	09-01-2019	6,678.02	3,145.99	3,532.03	631,843.02
54	10-01-2019	6,678.02	3,027.58	3,650.44	628,192.58
55	11-01-2019	6,678.02	3,110.43	3,567.59	624,624.99
56	12-01-2019	6,678.02	2,992.99	3,685.03	620,939.96
<b>2019 TOTALS:</b>		<b>80,136.24</b>	<b>37,553.83</b>	<b>42,582.41</b>	
57	01-01-2020	6,678.02	3,074.52	3,803.50	617,336.46
58	02-01-2020	6,678.02	3,056.67	3,821.35	613,715.11
59	03-01-2020	6,678.02	2,744.67	3,933.35	609,781.76
60	04-01-2020	6,678.02	3,019.27	3,658.75	606,123.01
61	05-01-2020	6,678.02	2,904.34	3,773.68	602,349.33
62	06-01-2020	6,678.02	2,982.47	3,695.55	598,653.78
63	07-01-2020	6,678.02	2,868.55	3,809.47	594,844.31
64	08-01-2020	6,678.02	2,945.31	3,732.71	591,111.60
65	09-01-2020	6,678.02	2,926.82	3,751.20	587,360.40
66	10-01-2020	6,678.02	2,814.44	3,863.58	583,496.82
67	11-01-2020	6,678.02	2,889.12	3,788.90	579,707.92
68	12-01-2020	6,678.02	2,777.77	3,900.25	575,807.67
<b>2020 TOTALS:</b>		<b>80,136.24</b>	<b>35,003.95</b>	<b>45,132.29</b>	
69	01-01-2021	6,678.02	2,851.05	3,826.97	571,980.70
70	02-01-2021	6,678.02	2,832.10	3,845.92	568,134.78
71	03-01-2021	6,678.02	2,540.82	4,137.20	563,997.58
72	04-01-2021	6,678.02	2,792.57	3,885.45	560,112.13
73	05-01-2021	6,678.02	2,683.87	3,994.15	556,117.98
74	06-01-2021	6,678.02	2,753.56	3,924.46	552,193.52
75	07-01-2021	6,678.02	2,645.93	4,032.09	548,161.43
76	08-01-2021	6,678.02	2,714.16	3,963.86	544,197.57
77	09-01-2021	6,678.02	2,694.53	3,983.49	540,214.08
78	10-01-2021	6,678.02	2,588.53	4,089.49	536,124.59
79	11-01-2021	6,678.02	2,654.56	4,023.46	532,101.13
80	12-01-2021	6,678.02	2,549.65	4,128.37	527,972.76
<b>2021 TOTALS:</b>		<b>80,136.24</b>	<b>32,301.33</b>	<b>47,834.91</b>	
81	01-01-2022	6,678.02	2,614.20	4,063.82	523,908.94
82	02-01-2022	6,678.02	2,594.08	4,083.94	519,825.00
83	03-01-2022	6,678.02	2,324.77	4,353.25	515,471.75
84	04-01-2022	6,678.02	2,552.30	4,125.72	511,346.03
85	05-01-2022	6,678.02	2,450.20	4,227.82	507,118.21
86	06-01-2022	6,678.02	2,510.94	4,167.08	502,951.13
87	07-01-2022	6,678.02	2,409.97	4,268.05	498,683.08
88	08-01-2022	6,678.02	2,469.17	4,208.85	494,474.23
89	09-01-2022	6,678.02	2,448.33	4,229.69	490,244.54
90	10-01-2022	6,678.02	2,349.09	4,328.93	485,915.61
91	11-01-2022	6,678.02	2,405.96	4,272.06	481,643.55
92	12-01-2022	6,678.02	2,307.88	4,370.14	477,273.41
<b>2022 TOTALS:</b>		<b>80,136.24</b>	<b>29,436.89</b>	<b>50,699.35</b>	
93	01-01-2023	6,678.02	2,363.17	4,314.85	472,958.56
94	02-01-2023	6,678.02	2,341.80	4,336.22	468,622.34
95	03-01-2023	6,678.02	2,095.78	4,582.24	464,040.10
96	04-01-2023	6,678.02	2,297.64	4,380.38	459,659.72
97	05-01-2023	6,678.02	2,202.54	4,475.48	455,184.24
98	06-01-2023	6,678.02	2,253.79	4,424.23	450,760.01
99	07-01-2023	6,678.02	2,159.89	4,518.13	446,241.88
100	08-01-2023	6,678.02	2,209.52	4,468.50	441,773.38
101	09-01-2023	6,678.02	2,187.39	4,490.63	437,282.75
102	10-01-2023	6,678.02	2,095.31	4,582.71	432,700.04
103	11-01-2023	6,678.02	2,142.47	4,535.55	428,164.49
104	12-01-2023	6,678.02	2,051.62	4,626.40	423,538.09
<b>2023 TOTALS:</b>		<b>80,136.24</b>	<b>26,400.92</b>	<b>53,735.32</b>	
105	01-01-2024	6,678.02	2,097.10	4,580.92	418,957.17
106	02-01-2024	6,678.02	2,074.42	4,603.60	414,353.57
107	03-01-2024	6,678.02	1,853.08	4,824.94	409,528.63
108	04-01-2024	6,678.02	2,027.74	4,650.28	404,878.35
109	05-01-2024	6,678.02	1,940.04	4,737.98	400,140.37
110	06-01-2024	6,678.02	1,981.25	4,696.77	395,443.60
111	07-01-2024	6,678.02	1,894.83	4,783.19	390,660.41
112	08-01-2024	6,678.02	1,934.31	4,743.71	385,916.70
113	09-01-2024	6,678.02	1,910.82	4,767.20	381,149.50
114	10-01-2024	6,678.02	1,826.34	4,851.68	376,297.82
115	11-01-2024	6,678.02	1,863.20	4,814.82	371,483.00
116	12-01-2024	6,678.02	1,780.02	4,898.00	366,585.00

**AMORTIZATION SCHEDULE  
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<b>2024 TOTALS:</b>		<b>80,136.24</b>	<b>23,183.15</b>	<b>56,953.09</b>	
117	01-01-2025	6,678.02	1,815.10	4,862.92	361,722.08
118	02-01-2025	6,678.02	1,791.03	4,886.99	356,835.09
119	03-01-2025	6,678.02	1,595.85	5,082.17	351,752.92
120	04-01-2025	6,678.02	1,741.67	4,936.35	346,816.57
121	05-01-2025	6,678.02	1,661.83	5,016.19	341,800.38
122	06-01-2025	6,678.02	1,692.39	4,985.63	336,814.75
123	07-01-2025	6,678.02	1,613.90	5,064.12	331,750.63
124	08-01-2025	6,678.02	1,642.63	5,035.39	326,715.24
125	09-01-2025	6,678.02	1,617.69	5,060.33	321,654.91
126	10-01-2025	6,678.02	1,541.26	5,136.76	316,518.15
127	11-01-2025	6,678.02	1,567.20	5,110.82	311,407.33
128	12-01-2025	6,678.02	1,492.16	5,185.86	306,221.47
<b>2025 TOTALS:</b>		<b>80,136.24</b>	<b>19,772.71</b>	<b>60,363.53</b>	
129	01-01-2026	6,678.02	1,516.22	5,161.80	301,059.67
130	02-01-2026	6,678.02	1,490.66	5,187.36	295,872.31
131	03-01-2026	6,678.02	1,323.21	5,354.81	290,517.50
132	04-01-2026	6,678.02	1,438.47	5,239.55	285,277.95
133	05-01-2026	6,678.02	1,366.96	5,311.06	279,966.89
134	06-01-2026	6,678.02	1,386.22	5,291.80	274,675.09
135	07-01-2026	6,678.02	1,316.15	5,361.87	269,313.22
136	08-01-2026	6,678.02	1,333.47	5,344.55	263,968.67
137	09-01-2026	6,678.02	1,307.01	5,371.01	258,597.66
138	10-01-2026	6,678.02	1,239.11	5,438.91	253,158.75
139	11-01-2026	6,678.02	1,253.49	5,424.53	247,734.22
140	12-01-2026	6,678.02	1,187.06	5,490.96	242,243.26
<b>2026 TOTALS:</b>		<b>80,136.24</b>	<b>16,158.03</b>	<b>63,978.21</b>	
141	01-01-2027	6,678.02	1,199.44	5,478.58	236,764.68
142	02-01-2027	6,678.02	1,172.31	5,505.71	231,258.97
143	03-01-2027	6,678.02	1,034.24	5,643.78	225,615.19
144	04-01-2027	6,678.02	1,117.11	5,560.91	220,054.28
145	05-01-2027	6,678.02	1,054.43	5,623.59	214,430.69
146	06-01-2027	6,678.02	1,061.73	5,616.29	208,814.40
147	07-01-2027	6,678.02	1,000.57	5,677.45	203,136.95
148	08-01-2027	6,678.02	1,005.81	5,672.21	197,464.74
149	09-01-2027	6,678.02	977.72	5,700.30	191,764.44
150	10-01-2027	6,678.02	918.87	5,759.15	186,005.29
151	11-01-2027	6,678.02	920.98	5,757.04	180,248.25
152	12-01-2027	6,678.02	863.69	5,814.33	174,433.92
<b>2027 TOTALS:</b>		<b>80,136.24</b>	<b>12,326.90</b>	<b>67,809.34</b>	
153	01-01-2028	6,678.02	863.69	5,814.33	168,619.59
154	02-01-2028	6,678.02	834.90	5,843.12	162,776.47
155	03-01-2028	6,678.02	727.97	5,950.05	156,826.42
156	04-01-2028	6,678.02	776.51	5,901.51	150,924.91
157	05-01-2028	6,678.02	723.18	5,954.84	144,970.07
158	06-01-2028	6,678.02	717.80	5,960.22	139,009.85
159	07-01-2028	6,678.02	666.09	6,011.93	132,997.92
160	08-01-2028	6,678.02	658.52	6,019.50	126,978.42
161	09-01-2028	6,678.02	628.72	6,049.30	120,929.12
162	10-01-2028	6,678.02	579.45	6,098.57	114,830.55
163	11-01-2028	6,678.02	568.57	6,109.45	108,721.10
164	12-01-2028	6,678.02	520.96	6,157.06	102,564.04
<b>2028 TOTALS:</b>		<b>80,136.24</b>	<b>8,266.36</b>	<b>71,869.88</b>	
165	01-01-2029	6,678.02	507.83	6,170.19	96,393.85
166	02-01-2029	6,678.02	477.28	6,200.74	90,193.11
167	03-01-2029	6,678.02	403.36	6,274.66	83,918.45
168	04-01-2029	6,678.02	415.51	6,262.51	77,655.94
169	05-01-2029	6,678.02	372.10	6,305.92	71,350.02
170	06-01-2029	6,678.02	353.28	6,324.74	65,025.28
171	07-01-2029	6,678.02	311.58	6,366.44	58,658.84
172	08-01-2029	6,678.02	290.44	6,387.58	52,271.26
173	09-01-2029	6,678.02	258.82	6,419.20	45,852.06
174	10-01-2029	6,678.02	219.71	6,458.31	39,393.75
175	11-01-2029	6,678.02	195.05	6,482.97	32,910.78
176	12-01-2029	6,678.02	157.70	6,520.32	26,390.46
<b>2029 TOTALS:</b>		<b>80,136.24</b>	<b>3,962.66</b>	<b>76,173.58</b>	
177	01-01-2030	6,678.02	130.67	6,547.35	19,843.11
178	02-01-2030	6,678.02	98.25	6,579.77	13,263.34
179	03-01-2030	6,678.02	59.32	6,618.70	6,644.64
180	04-01-2030	6,678.02	33.38	6,644.64	0.00

**AMORTIZATION SCHEDULE  
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<b>2030 TOTALS:</b>	<b>26,712.08</b>	<b>321.62</b>	<b>26,390.46</b>
<b>TOTALS:</b>	<b>1,202,043.60</b>	<b>402,043.60</b>	<b>800,000.00</b>

**NOTICE:** This is an estimated loan amortization schedule. Actual amounts may vary if payments are made on different dates or in different amounts.

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**EXHIBIT F**  
**CEC AGREEMENT**

## COMMUNITY SOLAR INTEREST PURCHASE AND ENERGY AGENCY AGREEMENT

This Community Solar Interest Purchase and Energy Agency Agreement (the "**Agreement**") is made by and between City of Wheat Ridge ("**Customer**"), a Colorado municipality with an address of 7500 W. 29<sup>th</sup> Avenue, Wheat Ridge, CO 80033, and a utility account serving the address set forth in **Appendix A** (the "**Location**"), and CEC Solar #1023, LLC, a Colorado limited liability company with principal offices at 361 Centennial Parkway, Suite 300, Louisville, CO 80027 ("**Company**"), effective as of the Effective Date (as set forth in **Appendix A**) (Customer and Company are referred to individually as a "**Party**" and collectively as the "**Parties**"). Capitalized terms used in this Agreement shall have the meanings set forth in the body of this Agreement and/or in an **Appendix**.

### RECITALS

A. Customer is a customer of Public Service Company of Colorado d/b/a Xcel Energy (the "**Utility**") for electric service at the Location, and desires to participate in the Solar\*Rewards Community program currently offered by Utility pursuant to the terms of a Rate Schedule found at Colo. PUC No. 7 Electric, Sheet Nos. 94 through 94G (the "**Program**"), as may be amended from time-to-time.

B. Company has constructed or intends to construct a community solar garden as that term is defined in the Program at the location set forth in **Appendix A** (the "**Facility**"). Company will also interconnect the Facility with the Utility pursuant to the terms of a power purchase agreement, interconnection agreement, any applicable tariff, and/or any other required agreement with Utility (collectively, the "**ICA**") pursuant to which Company and/or its Affiliate will deliver power generated at the Facility to Utility and Utility will provide credits on the bills for certain customers for power generated by the Facility ("**Bill Credits**"), as set forth in the ICA and the Program and as directed by Company and/or its Affiliate.

C. Customer wishes to purchase from Company the electric generating capacity and actual electric production of solar panels at the Facility with nameplate electric generation capacity as set forth on **Appendix A** and intends for this purchase to qualify as the acquisition of a Photovoltaic Energy Subscription (the "**Interest**") as that term is defined in the Program.

D. Customer wishes to appoint Company as Customer's agent with authority to deliver and sell power and related Environmental Attributes (as defined in **Appendix B**) attributable to the Interest. Customer also wishes to appoint Company as Customer's agent with authority to exchange information with Utility with respect to Customer's account for electric service at the Location to effectuate the terms of this Agreement, the ICA and the Program.



NOW, THEREFORE, for and in consideration of the mutual promises contained herein, Customer and Company agree as follows:

## **1. Purchase of Interest**

1.1 Sale and Purchase. Company hereby sells to Customer, and Customer hereby purchases from Company, the entire electric generating capacity of solar panels at the Facility with nameplate electric generation capacity as set forth on Appendix A (the "*Capacity*") along with the actual electric production attributable to the Capacity (the "*Customer Output*"), calculated as set forth in Appendix B, for the Term (as defined herein). The Capacity represents the percentage of the total nameplate electric generating capacity of the Facility as set forth on Appendix A as Customer Portion (as defined in Appendix B).

1.2 Purchase Price. Customer agrees to pay Company for the Capacity, the Customer Output, and all other services and rights under this Agreement, the total amount of \$776,628.00 (the "*Purchase Price*" as further defined in **Appendix B**), payable as set forth below.

(a) Timing of Payment. If the Facility is interconnected with Utility as of the Effective Date of this Agreement, and City Council approval has been obtained. Customer shall pay the entire Purchase Price on or before the Effective Date. If the Facility is not interconnected with Utility as of the Effective Date, Customer shall pay a deposit and the balance of the Purchase Price as set forth in Sections 1.2(b) and (c).

(b) Deposit. If the Facility is not interconnected with Utility as of the Effective Date, Customer shall pay a deposit in the amount of 10 percent of the Purchase Price (the "*Deposit*") on or before the Effective Date of this Agreement. The Deposit shall be refundable upon request of the Customer made in writing at any time before payment of the balance of the Purchase Price is due under Section 1.2(c), or if City Council approval is not obtained, in which case this Agreement shall terminate. The Deposit is held in a Trust Account and funds are not deployed until the sale has been completed.

(c) Balance. If Customer has paid a deposit under Section 1.2(b), then Customer shall pay the balance of the Purchase Price within seven (7) days after Company provides notice to Customer that the Facility has been interconnected to the Utility and is capable of delivering electricity to Utility. Company may provide such notice by mail, email, or fax addressed as set forth in Appendix A. Notice by email or fax is effective when sent. If Customer does not pay the balance of the Purchase Price as required by this Section, then Company may, at its sole option, terminate this Agreement by refunding the Deposit.

## **2. Appointment of Company as Customer's Agent**

2.1 Sale of Energy and Environmental Attributes. Customer hereby appoints Company and its Affiliates as Customer's sole, exclusive, and authorized agent with full power and authority to deliver, assign, transfer, and sell all of the Customer Output to Utility pursuant to the terms of the ICA as it may be amended or replaced from time to time (in Company's sole discretion), and to enter into, administer, and enforce the ICA on Customer's behalf. Customer also appoints Company and its Affiliates as Customer's sole, exclusive, and authorized agent with full power and authority to deliver, assign, transfer, and sell all of the Environmental Attributes associated with the Capacity and the Customer Output to Utility and/or other third parties. Customer waives, relinquishes, and quitsclaims any right, claim, and interest in the Customer Output and associated Environmental Attributes. Customer shall execute any additional documents and instruments necessary to evidence the Environmental Attributes and to effect or evidence the transfer of the Environmental Attributes to

Company and/or its Affiliates, Utility, a third party, or their designee.

2.2 Interaction with Utility. Customer hereby appoints Company and its Affiliates as Customer's authorized agent with full power and authority to provide information to Utility as provided in the ICA and the Program to allow Utility to provide Bill Credits to which Customer may be entitled, based on Customer's Interest, on Customer's account and bills for electric service from Utility to the Location. Such information includes, but is not limited to, Customer's name, address, Utility account number, the Capacity, Customer's Portion, and the Customer Output, on a monthly or other periodic basis. Customer retains authority to communicate with, instruct, and direct the Utility with respect to other matters pertaining to electric service to the Location, as well as with respect to Customer's participation in the Program.

2.3 Release/Letter of Authorization. Customer will permit Utility to release consumption and other information to Company to effectuate the terms of this Agreement, the ICA and the Program. Customer will execute any documents reasonably requested by Utility and Company to permit the release of such information.

2.4 Effect of Termination of Program by Utility. In the event Utility ceases to offer the Program or a comparable substitute, then the Parties shall use commercially reasonable efforts to explore and consider alternative means by which Customer may realize value from the Interest. If the Parties agree to a different arrangement, that will be documented in a new agreement. If the Parties are unable to so agree, then provided that Customer is not in default of this Agreement and this Agreement has not been earlier terminated, Customer may exercise its Purchase Option as set forth in Section 9 of this Agreement by giving 90 days' notice after the date Utility ceases to offer the Program or a comparable substitute. Whether or not Customer chooses to exercise the Purchase Option as set forth above, this Agreement will terminate on the date when Utility ceases to offer bill credits or other payments to Customer in respect of the Interest.

### **3. Bill Credits and Incentive Payments**

3.1 Payable by Utility. Customer shall be entitled to receive credits on its bills from Utility in respect of the Customer Output, to be made solely by Utility and according to the terms of the Program. Customer acknowledges that the duration, terms and conditions of the Program, including the amount of Bill Credits to be applied, are subject to the sole and exclusive control of Utility. For informational purposes only, as of the Effective Date, the Program provides that Utility shall provide a bill credit in the amount of \$0.19859 per kilowatt-hour for the Customer Output, and also provides that this rate may be revised by Utility from time-to-time. Customer acknowledges that Company has not made any representations or warranties with respect to the expected duration of the Program or the amounts to be provided by Utility as bill credits.

3.2 Incentive Payments. Customer acknowledges that Utility and/or another third party may provide incentives and/or renewable energy incentives, including payments or bill credits, with respect to the Environmental Attributes attributable to Customer's Interest, or otherwise, other than as a bill credit for Customer Output as addressed in Section 3.1 (collectively, the "*Incentives*"), and that Utility and/or another third party may pay the Incentives directly to Company and/or its Affiliates. Customer waives, relinquishes, and quitclaims any right, claim, and interest in the Incentives and, to the extent necessary, assigns all right, title, and interest to the Incentives to Company and acknowledges that Customer is not entitled to retain any such Incentives. Customer hereby authorizes Company to notify Utility that Customer has assigned such Incentives to Company and that Utility may make any such payment to which Customer may otherwise be entitled directly to Company. Customer will promptly execute any additional documents as requested by Utility, Company and/or another third party necessary for Company to claim such Incentives and/or to

enable or authorize Utility and/or another third party to make such payments directly to Company. In the event that Utility and/or another third party provides any such Incentives directly to Customer, whether as a payment or bill credit, Customer agrees to inform Company and to pay the amount of such Incentives to Company within ten (10) days of Customer's receipt.

3.3 No Other Payments. Customer acknowledges and agrees that Company's only obligations with respect to payments to Customer are that Company shall request and use commercially reasonable efforts to require Utility to make Bill Credits and the REC Payments discussed in Section 3.4 below. In addition, Company shall not be required to request Utility to make any credits or Payments in excess of the limitations set forth in Section 6.3 of this Agreement.

3.4 REC Payments. The Incentives may include payments made to Company by Utility in respect of RECs assigned to Utility relating to the Facility (the "**REC Payments**"). Company agrees to share with Customer a portion of the REC Payments it actually receives from Utility. Customer acknowledges and agrees that Company shall first apply a portion of the REC Payments to the O&M Fund as described in Section 5. Company shall pay to Customer all amounts remaining, if any, from the REC Payments that are not applied to the O&M Fund, on a quarterly basis (the Customer REC Payments). The Customer REC Payments will be made to Customer by bill credit, check or electronic funds transfer within 30 days following the end of a calendar quarter in respect of REC Payments received for the prior calendar quarter.

#### 4. Term and Termination

4.1 Term. The Term of this Agreement shall be the Initial Term plus any Extended Term, unless the Agreement is terminated earlier as provided in Section 4.4, in which case the Term shall expire on the effective date of such termination.

4.2 Initial Term. The Initial Term of this Agreement shall commence on the Effective Date and end twenty (20) years after the Interconnection Date set forth in Appendix A.

4.3 Extended Term. In the event that the term of the ICA continues or is extended beyond the Initial Term, the term of this Agreement shall automatically be extended for commensurate terms (the "**Extended Terms**").

##### 4.4 Termination.

(a) Termination of ICA. This Agreement will terminate automatically upon the expiration or termination of the ICA unless a new ICA is entered as provided in section 2.1.

(b) Material Breach. Either Party may terminate this Agreement upon written notice if a Party breaches any of the material terms of this Agreement, including without limitation the representations and warranties. Before terminating the Agreement, the non-breaching Party shall give the breaching Party written notice of the breach and thirty (30) days to cure any such breach to the non-breaching Party's reasonable satisfaction.

(c) Termination in Other Events. This Agreement may also be terminated as provided in Sections 1.2, 2.4, 8.3, 8.4, 9.4, and 18.

(d) Survival. In the event of expiration or earlier termination of this Agreement, the following sections shall survive: Sections 3.2, 11, 12, 13 and 14.

#### 5. Operation and Maintenance of Facility

5.1 Company shall perform acts necessary or appropriate for the proper operation and

maintenance of the Facility. Company shall employ or retain qualified personnel to perform services customarily performed with respect to property of the type comprising the Facility, in keeping with industry standards, and shall pay such persons reasonable compensation for performing such services. Company will initially appoint or has appointed CE Services, Ltd. as property manager to operate and maintain the Facility.

5.2 In order to ensure that there is sufficient funding to pay for initial operation and maintenance of the Facility, Company shall deposit Three Thousand and Seven Hundred Dollars (\$3,700.00) into a segregated and independently administered account with a reputable banking institution or savings and loan association within twenty (20) business days of the receipt of the full Purchase Price, as defined in Section 1.2, from the Customer, which segregated account shall be dedicated solely to the costs of operation and maintenance of the Facility as provided in this Section 5 and the payment of insurance costs (the "O&M Fund"). The money to be deposited in the O&M Fund as set forth in this Section 5 is for the benefit of the entire Facility, not just the portion that represents Customer's Interest.

5.3 Supplemental Operation and Maintenance Fee. Company shall be entitled to utilize additional funds from what would otherwise be paid as Customer REC Payments (the "Recurring O&M Fee"). The Recurring O&M Fee shall be \$0.02 per kWh of Customer Output. Customer hereby authorizes Company to make deductions for the Recurring O&M Fee. Any amounts Company receives as a Recurring O&M Fee will be deposited into the O&M Fund.

## **6. Customer's Representations and Warranties**

Customer represents and warrants the following:

6.1 Utility Customer Status. Customer is an electric service customer of Utility at the Location and shall so remain for the entire Term of this Agreement.

6.2 Provision of Information to Utility. Customer shall provide to Utility all applications, documentation and information required by Utility and otherwise to qualify Customer to participate in the Program.

6.3 Maximum Capacity. Customer's Capacity does not and shall not exceed the limitations set forth in **Appendix C** (the "**Maximum Capacity**"). Customer acknowledges that Utility is not obligated to make any payment or bill credit to the extent Customer's Capacity exceeds those limitations. Customer also acknowledges that the limitations set forth in **Appendix C** are derived from the ICA and the Program and agrees that this Agreement will be deemed automatically amended to incorporate any changes to corresponding provisions in the ICA or the Program.

6.4 No Other Assignment or Authorization. Customer has not assigned or sold the Capacity, Interest, Customer Output or Environmental Attributes to any other person or entity, and will not do so during the Term of this Agreement, except as permitted under Section 8.3 and 10.1. Customer has not provided any other person or entity any of the authority granted to Company under this Agreement and will not do so during the Term of this Agreement.

6.5 No Liens or Encumbrances. Customer has not granted or placed or allowed others to place any liens, security interests, or other encumbrances on the Capacity, Customer Output or Environmental Attributes and will not do so during the Term of this Agreement. Customer may grant a security interest in the Interest and this Agreement to secure a loan for the Purchase Price.

## **7. Company's Representations and Warranties**



Company represents and warrants that it shall at all times perform its obligations under the ICA and the Program and exercise commercially reasonable efforts to maintain the ICA in effect for the Term of this Agreement.

## **8. Change of Customer Location For the Posting of Bill Credits**

8.1 Notice. Customer shall notify Company in writing thirty (30) days prior to any change in Customer's Location during the Term.

8.2 New Location Within Utility Service Territory. If Customer ceases to be a Utility customer at the Location and moves to a new location within the service territory of Utility, then Customer shall take all steps and provide all information required by Utility under the Program to transfer the Interest to the new location, which shall be substituted as the Location under this Agreement and this Agreement shall continue in effect. Customer acknowledges that it will no longer be entitled to participate in the Program, or Customer's participation may be limited, if the Location or any new location of Customer within Utility's service territory does not comply with the Utility's requirements, including but not limited to Maximum Capacity.

8.3 Transfer to Another Utility Customer. So long as permitted to do so under, and in compliance with all terms of, the Program, if Customer ceases to be a Utility customer at the Location, Customer may transfer the Interest to another Utility customer(s) who qualifies for participation in the Program (including but not limited to Maximum Capacity). Customer shall provide Company with all requested documentary evidence and information relating to the transfer, including without limitation the new customer's name, address, Utility account number, and qualification by the Utility to participate in the Program. Upon receipt of such documents and information, Company will prepare an agreement similar to this Agreement for execution by the new customer, except that the Term shall be only the remaining Term under this Agreement. Upon execution of such new agreement, this Agreement will terminate. Company shall have no obligation to assist Customer in identifying any new customer to whom Customer may transfer the Interest, nor shall Company be obligated to purchase the Interest or otherwise compensate Customer in the event Customer does not transfer the Interest. In addition, prior to obtaining approval for any such transfer, the new customer must cure all outstanding obligations of Customer under this Agreement.

8.4 Other Termination of Utility Service. If Customer ceases to be a Utility customer for electric service at the Location and does not comply with either Section 8.2 or 8.3 within the time periods set forth in the Program, then Customer shall cease to receive any billing credits or other payments from Utility in respect of the Interest and this Agreement will terminate. Customer will not make any claim against Company for payment or other compensation with respect to Customer's Interest.

8.5 Re-Assignment by Customer's Lender. In the event a Lender (as defined herein) or other third party is granted any rights under this Agreement, then in the event of Customer's default or otherwise, Company may follow any reasonable instructions by such third party with respect to changing the location and/or beneficiary of this Agreement, and Customer hereby releases Company from any liability in that regard. Any such new location or beneficiary must comply with all applicable requirements and procedures set forth in Section 8.3 for transfer of the Interest to another customer.

## **9. Purchase Option**

9.1 Grant of Option. During the period beginning upon the fifth anniversary of the Interconnection Date and ending upon the last day of the Term, and provided that Customer is not in

default of this Agreement and this Agreement has not been earlier terminated, Customer may purchase the solar panels upon which Customer's Interest is based, on an AS IS BASIS from Company for the Purchase Option Price as set forth in Section 9.2. In the event Customer purchases such panels, Customer will provide Company with a valid sales tax exemption certificate in respect to such purchase. Customer must give Company at least thirty (30) days, but no more than ninety (90) days, prior written notice of its election to exercise this option to purchase. Upon payment of the Purchase Option Price and execution of the Co-Location Agreement and other purchase-related documents, Company will convey ownership of the panels, including, without limitation, all Environmental Attributes (that are still owned by Company at the time of conveyance or not otherwise encumbered by Incentives, the ICA or the Program) by Bill of Sale. The obligations of both Parties in this Agreement will continue as to such panels and their output to the extent permissible under the ICA and the Program.

9.2 Purchase Option Price. The price for exercising the purchase option (the "**Purchase Option Price**") shall be (a) the fair market value of the panels as of the Exercise Date, minus (b) the product of (i) the fraction obtained by dividing the number of years remaining in the Term by 20 and (ii) the Purchase Price; however, in no event shall the Purchase Option Price be less than \$1.00. If the Parties cannot agree to a fair market value, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the fair market value of the panels. Such appraiser shall act reasonably and in good faith to determine the fair market value of the panels on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Notwithstanding any other provision of this Agreement to the contrary, in the event Customer has elected to purchase the panels before the fair market value is finally determined, then Customer shall have the right to withdraw such election without liability or obligation to Company within thirty (30) days after the date upon which Customer receives notice of the final determination of such fair market value.

9.3 Continuing and Additional Obligations Following Purchase. In the event Customer exercises this purchase option, except if done under Section 2.4, it is the Parties' intention that Company shall continue to sell and deliver the Customer Output and all Environmental Attributes to Utility and/or another third-party and that Utility shall continue to provide bill credits to Customer to the extent permissible under the ICA and the Program, and that this Agreement shall continue to operate for the Term. If Customer is no longer permitted to participate in the Program after purchasing the panels, then the Parties shall explore and consider alternative means by which Customer may realize value from the Panels.

9.4 Removal or Sale of Panels. Following exercise of its purchase option, Customer may request Company to remove Customer's panels from the Facility. Customer shall be required to pay all costs of removal as determined by Company in its sole discretion, including but not limited to any required modifications to the Facility to accommodate such removal, in advance of Company performing any such work. Upon completion of such removal, this Agreement shall terminate. Customer may also sell Customer's panels, to the extent permitted by law, to another Utility customer who qualifies for participation in the Program and in compliance with all of the requirements and procedures of Section 8.3 (pertaining to transfer of Customer's Interest).

## 10. Assignment

10.1 Assignment by Customer. Customer may not assign this Agreement and may not otherwise assign or transfer Customer's Interest without the consent of Company, which will not be unreasonably withheld, conditioned or delayed, except as provided in Section 8.3; provided however,



that the Parties acknowledge that Customer may finance all or part of Customer's payment of the Purchase Price by receiving a loan (the "Loan") from a third-party lender (the "Lender"), and that as collateral for such Loan, Company may assign this Agreement and may assign or transfer Customer's Interest to the Lender.

10.2 Assignment by Company. Except as otherwise provided in this Agreement, Company may not assign this Agreement except with the consent of Customer, which will not be unreasonably withheld, conditioned or delayed.

10.3 Permitted Actions. Provided that the Company remains responsible for the ultimate performance of Company obligations under this Agreement, Company may assign any of its rights, duties, or obligations under this Agreement to another entity or individual, including any Affiliate, whether by contract, change of control, operation of law or otherwise, without Customer's prior written consent.

## 11. Dispute Resolution

11.1 Credit or Payment Dispute. If Customer disputes the amount of any Bill Credit or Customer REC Payment made under this Agreement, Customer shall provide written notice explaining the dispute to Company, along with documentation sufficient to support Customer's claim. Company shall consider Customer's claim and respond in writing within twenty (20) days.

11.2 Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the state of Colorado without regard to its conflict of laws rules.

11.3 Attorney's Fees and Costs. In any proceeding to enforce any of the provisions or rights under this Agreement, the prevailing Party shall be entitled to recover all costs and reasonable attorney's fees incurred by the prevailing Party.

## 12. Hold Harmless

12.1 General. To the extent permitted by law, each Party shall hold harmless the other Party and its Affiliates, directors, officers, managers, members, partners, employees, representatives, agents and affiliates (together, "**Related Parties**") from and against any and all claims, demands, losses, damages, liabilities, legal proceedings, judgments and awards, costs and expenses (including but not limited to reasonable attorneys' fees) arising directly or indirectly in whole or in part out of personal injury (including death) and property damage (real and personal) arising out of such Party's act or omission.

12.2 Other Agreements. To the extent permitted by law, Customer shall hold Company and its Related Parties harmless from any and all claims, liability, charges, actions, and demands arising out of or relating to: (a) credits and payments made or required to be made by Utility to or on Customer's behalf pursuant to this Agreement, the Program, and/or the ICA; (b) amounts owed by Customer to Utility or actions taken by Company with respect to Customer's Utility account; and (c) payments made or required to be made or actions taken or required to be taken by Customer under any agreement for the purchase or financing of the Interest or the Panels.

## 13. Reporting and Marketing

Customer authorizes Company and its affiliates to use Customer's name and Capacity ("**Customer Information**") for reporting and marketing purposes. Company shall use the Customer Information only for official reporting to governmental authorities, Utility, public utility commissions, and similar organizations, and in marketing material generated and distributed by

Company or its affiliates. Under no circumstances, except as required by law and as otherwise provided in this Agreement, will Company release or otherwise publish any information collected from Customer other than the Customer Information. Notwithstanding this Section, Company will not use or disclose Customer's name for marketing purposes if Customer provides written notice prohibiting such use.

#### **14. Applicability of Open Records Act**

The parties acknowledge and agree (a) that the Customer is required to comply with the Colorado Open Records Act, and (b) that the terms of this Agreement contain and constitute confidential and privileged market information and trade secrets of Company, which if disclosed to Company's competitors could harm the Company. The Customer agrees to not disclose the terms hereof to any other entity or person, except for the limited purpose of facilitating the business relationship with Company and the transactions contemplated herein or as may be required under the Open Records Act or other requirements of law. Customer will advise Company of any request for the foregoing information under the Open Records Act.

#### **15. Notices**

In the event that any notice or other communication is required or permitted to be given hereunder, such notice or communications will be in writing and may be delivered in person or sent by certified mail, overnight courier or transmitted by facsimile to the address of the addressee as specified below. Except as otherwise provided, all such notices or other communications will be deemed to have been duly given and received upon receipt.

To Company:	CEC Solar #1023, LLC 361 Centennial Parkway, Ste. 300 Louisville, CO 80027 Attn: Manager Fax No.: 970-692-2592
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To Customer:	As set forth in <b>Appendix A.</b>
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#### **16. Entire Agreement**

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes any other agreement or understanding, written or oral. Customer acknowledges that it will also execute Utility's SRC Subscriber Agency Agreement for the Program. In the event of any conflict between the terms of that agreement and this Agreement, this Agreement shall control.

Customer acknowledges that the Utility's SRC Subscriber Agency Agreement is needed for participation under the Program. In the event that Customer elects not to execute the Utility's SRC Subscriber Agency Agreement, or the Customer elects to revoke or cancel the Utility's SRC Subscriber Agency Agreement, then the Customer may terminate this contract, and such termination shall be considered a termination for convenience and not for breach of either Party. The provisions of the Utility's SRC Subscriber Agency Agreement shall not be considered to modify any of the terms or conditions of this Agreement, except as may be detailed in a subsequent written amendment to this Agreement, duly executed by both Parties hereto.

## **17. Governmental Immunity**

Customer and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to Customer and its officers, attorneys or employees.

## **18. Annual Appropriation**

Financial obligations of the Customer under this Agreement payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available by the Town Council of the City of Wheat Ridge, Colorado. If sufficient funds shall not be made available, this Agreement may be terminated by either Party without penalty; provided, however, that in the event of termination of this Agreement pursuant to this section Customer shall pay all sums due from it prior to the date of termination. The Customer's obligations hereunder shall not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

## **19. General**

19.1 Modification and Waiver. This Agreement may be modified, or any provision waived, only by a written instrument signed by both Parties.

19.2 Authority. The Parties represent and warrant that they have full authority to execute and deliver this Agreement and to perform their obligations under this Agreement, and that the person whose signature appears on the Agreement is duly authorized to enter into this Agreement on behalf of the respective Party.

19.3 Severability. Should any terms of this Agreement be declared void or unenforceable by any court of competent jurisdiction, such terms will be amended to achieve as nearly as possible the same economic effect for the Parties as the original terms and the remainder of the Agreement will remain in full force and effect.

19.4 No Partnership. Nothing contained in this Agreement will constitute Company as a joint venturer, employee, or partner of Customer, or render Company liable for any debts, obligations, acts, omissions, representations, or contracts of Customer, including without limitation Customer's obligations to Utility for electric service.

19.5 Third Party Beneficiaries. There are no third party beneficiaries of this Agreement.

## **20. Prohibition Against Employing Illegal Aliens**

(This section shall not apply to an individual person who does not hire employees to perform this contract.) This paragraph shall apply to all Contractors whose performance of work under this Agreement does not involve the delivery of a specific end product other than reports that are merely incidental to the performance of said work. Pursuant to Section 8-17.5-101, C.R.S., *et seq.*, Contractor

represents and agrees that:

A. **UNLAWFUL EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS:** Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor shall not knowingly contract with a subcontractor that (a) knowingly employs or contracts with an illegal alien to perform work under this Contract or (b) fails to certify to the Contractor that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Contract.

B. **VERIFICATION REGARDING ILLEGAL ALIENS:** Upon entry into a new contract or renewal of a contract for services Contractor will verify through participation in either the E-verify Program or the Department Program of the State of Colorado that Contractor does not employ any illegal aliens. If Contractor chooses to use the Department Program, Contractor shall complete a "Notice of Participation in the Department Program for Public Contracts for Services" and distribute said notice to the Colorado Division of Labor and the City.

If Contractor has chosen to use the Department Program, and if, during the contract period, Contractor hires an employee who is newly hired for employment to perform work under the contract, Contractor shall, within twenty days of hiring an employee, affirm that Contractor has examined the legal work status of such employee, retained file copies of the documents required by 8.U.S.C. 1324a, and not altered or falsified the identification documents for such employees. The Contractor shall provide a written, notarized copy of the affirmation to the City.

C. **LIMITATION REGARDING E-VERIFY PROGRAM AND DEPARTMENT PROGRAM:** Contractor shall not use either the E-verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing this Contract.

D. **DUTY TO TERMINATE A SUBCONTRACT; EXCEPTIONS:** If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien:

- a. notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- b. terminate the subcontract with the subcontractor if, within three days of receiving notice that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien, the subcontractor does not stop employing or contracting with the illegal alien.

E. **DUTY TO COMPLY WITH STATE INVESTIGATION:** Contractor shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation pursuant to C.R.S. 8-17.5-102 (5).

F. **DAMAGES FOR BREACH OF CONTRACT:** In addition to any other legal or equitable remedy the City may be entitled to a breach of this Contract, if the City terminates this Contract, in whole or in part, due to Contractor's breach of any paragraph in this Section,

Contractor shall be liable for actual and consequential damages to the City.

- G. CERTIFICATION: Prior to executing contract, the contractor shall certify that it does not knowingly employ or contract with an illegal alien who will perform work under the contract and that the contractor will participate in the E-Verify Program or the Department Program in order to confirm the employment eligibility of its employees.

**21. Open Records**

The City of Wheat Ridge is a governmental agency and as such is subject to the Colorado Open Records Act.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of November 5, 2014.

**CEC SOLAR #1023, LLC**

By: \_\_\_\_\_  
Mark Boyer, Authorized Representative

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

ATTEST:

**CITY OF WHEAT RIDGE**

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

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

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

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

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

APPROVED

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

## **APPENDIX A**

### **Customer and Facility Information**

**Customer Name(s):** City of Wheat Ridge  
**Customer's Location:** 7500 W. 29<sup>th</sup> Avenue  
Wheat Ridge, CO 80033  
**Initial Meter # for Crediting:**  
**Tel:** 303-235-2805  
**Fax:**  
**Email:** pgoff@ci.wheatridge.co.us  
**Facility Company Name:** CEC Solar #1023, LLC  
**Facility Name:** Jefferson County 2  
**Facility Location:** W. 56<sup>th</sup> Ave., Golden, CO 80403  
**Capacity purchased by Customer:** 228.42 kW  
**Estimated initial annual amount of  
Customer Output ("Estimated  
initial Annual Production"):** 371,702 kWh  
**Customer Portion:** 40.00 %  
**Effective Date:** November 5, 2014  
**Interconnection Date:**  
**Panels:** Serial numbers will be provided in updated  
Appendix A's.

#### **Panel Locations:**



## APPENDIX B

### Definitions

Capitalized terms used in the Agreement are defined as follows unless defined in the body of the Agreement.

**"Affiliate"** means any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or partnered with, or is under common control with the person or entity specified.

**"Customer Output"** equals Customer Portion times Output for any applicable time period.

**"Customer Portion"** means the fraction or percentage obtained by dividing (i) Customer's Capacity by (ii) the total nameplate generating capacity of all panels at the Facility.

**"Effective Date"** means the date set forth on Appendix A.

**"Environmental Attributes"** means the full set of environmental, power source and emissions characteristics, whether in the form of credits (including Renewable Energy Credits), benefits, emissions reductions, offsets, allowances or by any other designation, attributable to the Capacity and Customer Output. Environmental Attributes include but are not limited to (1) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluoro carbons, perfluoro carbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change as of the effective date of this agreement, or otherwise under Law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere, (2) any avoided emissions of sulfur oxides (S<sub>ox</sub>), nitrogen oxides (N<sub>ox</sub>) and carbon monoxide (CO), and of any other pollutant of the air, soil or water (other than GHGs) that is now regulated under law, including as part of any renewable portfolio standard, or tradable under any registration or trading program; and (3) the right of the Utility and/or another third party as the owner or prospective owner of Environmental Attributes to report the ownership of accumulated Environmental Attributes to any agency, authority or other party, including without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present domestic, international or foreign Law, renewable portfolio standard or registration or trading program. One (1) MWh of energy output is assumed to be the equivalent to one unit of Environmental Attributes, subject to applicable law, standards, or trading program requirements. Environmental Attributes do not include: (i) any energy, capacity, reliability or other power attributes from the Panels or the Facility; (ii) production tax credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation; or (iii) fuel-related subsidies or "tipping fees" that may be paid to accept or dispose of certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits.

**"Output"** means the actual generating output of the Facility that is delivered to Utility as measured by the Utility's meter for any applicable time period. Output is net of any electricity consumed at the Facility.



**"Purchase Price"** equals the Total System Price less the PeakSavings Discount less any applicable rebates or incentives from the Utility (all as specified on the Closing Statement provided by Company).

**Renewable Energy Credit** or "**REC**" means a contractual right to the full set of Environmental Attributes resulting from one megawatt-hour of electric energy generated from an Eligible Energy Resource, as further provided in regulations adopted pursuant to C.R.S. § 40-2-124, currently set forth at 4 CCR 733-3, Rule 3652(n), as may be amended from time to time or as further defined or supplemented by law.

## APPENDIX C

The Estimated Initial Annual Production as set forth in Appendix A shall not exceed 120% of Customer's average annual electric power consumption at the Location. In addition, should Customer have an interest in any other Community Solar Facility, the sum total of the annual production attributable to all such interests shall not exceed 120% of Customer's average annual electric power consumption at the Location. Should Customer also be a net-metered customer of Utility at the Location, the sum total of the annual production attributable to all Community Solar interests in combination with the estimated output from its net-metered Eligible Energy Resource Facility shall not exceed the limits described herein.