



**CITY OF MAYER  
REGULAR CITY COUNCIL MEETING  
CITY COUNCIL CHAMBERS  
MONDAY, MAY 13, 2019  
6:30 PM**

**AGENDA**

- 1. Call Meeting to Order**
- 2. Pledge of Allegiance**
- 3. Approval of Agenda**
- 4. Public Comment (Please limit comments to 5 minutes)**
- 5. Consent Agenda**
  - A. Minutes
    1. April 22, 2019 City Council Meeting Minutes
    2. April 22, 2019 City Council Workshop Meeting Minutes
  - B. Claims
  - C. Ordinance Summary – Animals – Resolution 05-13-19-17
  - D. Liquor License – Off Sale – FillMeUp
  - E. Hiring of Firefighter – Justin Hecksel – Resolution 05-13-19-18
- 6. Reports and Recommendations of City Departments, Consultants, Commissions and Committees**
  - A. Administrative
    1. Novel Energy
    2. Cleaning Services – City Hall/Community Center
  - B. Planning and Zoning
    1. 505 Shimmcor Site Plan Review – Resolution 05-13-19-19
- 7. City Council Reports**
- 8. Other Business**
- 9. Upcoming Meetings & Events**

May 14, 2019 Park Commission Meeting  
May 28, 2019 City Council Meeting (Tuesday – Due to Memorial Day)
- 10. For Your Information**

**11. Adjournment**

MAYER CITY COUNCIL MEETING MINUTES – APRIL 22, 2019

Call Regular meeting to order at 6:30 p.m. by Mayor Dodge

PRESENT: Mayor Dodge, Council Members McNeilly, and Stieve-McPadden

ABSENT: Council Members Boder and Butterfield

STAFF: City Administrator McCallum, Deputy Clerk Gildemeister, Public Works Kuntz and Hilgers. City Attorney Sullivan and City Engineer Martini.

ALSO PRESENT: Don Wachholz, Kaye Timmers, Kathy Johnson, Joe Dvorak, Jenny Nace, Rick Masloski (Novel Energy), Jim Koerber (T4 Solutions), Brenda Lano (Carver County CDA).

The meeting was opened with the Pledge of Allegiance.

APPROVE AGENDA

A MOTION was made by Council Member McNeilly with a second by Council Member Stieve-McPadden to approve the agenda as presented. Motion Carried 3/0

PUBLIC COMMENT

None

APPROVE CONSENT AGENDA

A MOTION was made by Council Member McNeilly with a second by Council Member Stieve-McPadden to approve the Consent Agenda. Motion Carried 3/0.

1. Approve the Minutes of the April 8, 2019 Regular Council Meeting.
2. Approve Claims for the Month of April 2019. Check numbers 22221 to 22238. E-Check numbers 5237E to 5250E.
3. Reports from City Administrator, City Engineer, Sheriff Department, Public Works and Fire Department.

ADMINISTRATION

1. **National Night Out – August 6, 2019** – McCallum introduced this item stating that National Night Out is an annual event that seeks to bring together neighborhoods and police partnerships. It enhances relationships and creates safer communities. McCallum introduced residents, Jenny Nace, Kathy Johnson and Joe Dvorak (Lions Club) to the Council.

Johnson thanked the Council for allowing them to come to the meeting. She said that last year's event located in the parking lot of City Hall was a huge success. She said that she was glad to see Council show up to the event. She said that they are starting to prepare for the 2019 event with a co-sponsorship from the Mayer Lions Club. Johnson said that they are looking to add more amenities for kids, more food, and possibly a band.

Johnson asked if the City would support the event again in the City Hall parking lot location from 6:00 – 8:00 pm. on August 6, 2019. She inquired into using the City's electricity connection again and the garbage can. They are hoping to coordinate with the Sheriff's Department and Fire Department to make a presence at the event. She also asked if the City could help with social media and publicity for the event.

Dodge agreed that the City could provide support where it can including promoting the event, the electricity, garbage service and presence at the event.

2. **Novel Energy** – McCallum introduced Rick Masloski from Novel Energy to present on the Minnesota Community Solar Garden Program. Masloski began by introducing himself and the company, Novel Energy. He informed that the community solar garden program was created in 2013 with direction from the Minnesota State Legislature and is regulated by the Public Utilities Commission.

He informed that Novel Energy has a solar garden located near Lester Prairie in McCloed County that they are looking for subscribers to utilize. He said that the City of Mayer would be an ideal candidate. He said that upon looking at the City's current electricity usage for its facilities, that the City would take up 33% of the farm if subscribed. He explained that it would be \$0 upfront and that there is no production risk and no pricing risk in that the City would be guaranteed a discount regardless.

Masloski said that the solar farm feeds into the Xcel Energy grid.

He estimated that if the City did the 8 year term with the 2 year term replacement period (10 years) for a discount rate of a penny per kilowatt hour (kWh), that the estimated saving would be about \$5,700/year for 25 years.

Masloski went over the environmental benefits of the City supporting solar.

He went over the payment process stressing that the subscription rate will always remain one cent below the VOS bill credit rate.

Dodge explained that the City had been approached in the past by a company offering a similar subscription to an off-site solar farm. The Council discussed the differences between this contract and the proposal from years back. They concluded that the agreement was different in many aspects and that the previous proposal included a lot of uncertainty. They agreed that this proposal offered solutions to the uncertain elements.

Dodge asked if staff could provide and bring back some additional information including the differences between the previous proposal and this current one. He also asked if staff could provide information on other farms in Carver County and if there would be more of a benefit to support a farm within the same County as the City.

Council agreed that this could be a benefit to the City and wanted this to come back soon to a future meeting for further discussion with additional information.

3. **Carver County Community Development Agency – Land Trust** – McCallum introduced this item stating that the Carver County Community Development Agency administers the Community Land Trust program for the County. She informed that the CDA is hoping to expand the program throughout Carver County in cities that are interested. She said that currently, the program has 28 homes within the land trust mostly in the City of Chaska. They are expanding with a few more homes in Waconia and Victoria.

McCallum introduced Brenda Lano from the CDA to explain the program further. Lano explained the program to the Council stating that they are looking for support from Carver County cities to expand their program. The program helps to provide homeownership to people who would like to live in Carver County communities but need some support to make the purchasing of a home affordable.

Lano informed that Mayer, over the last few years, has not had affordable housing options based on affordability standards. She said that the cost of housing continues to increase. She said that the program helps by bringing properties into the land trust program and making properties affordable. They work with the cities to create a partnership.

Dodge asked if the program focused on new or existing homes. Lano said both.

Dodge said that it seems like a great idea and that he likes the model. He said that he would like more information and discussion between the Council on what they would have to provide within the partnership. For example, money, reduced fees, etc. He wants more information on what other communities offer.

Lano informed that some cities do nothing, while some offer between \$5,000 - \$10,000 in gap funding support. She explained that some communities require developers to participate properties into the program through density requirements. Chaska negotiated within a TIF district.

Lano said the first step would be to get overall City support for the program to come into the City. Lano provided information on the types of people they help including, first time homebuyers, seniors who downsized, people who work in the community but need financial assistance to live there, etc.

Dodge suggested that this be brought to the EDA for informational purposes and to see if there would be interest from the EDA to support this program as well. He said that then it should be brought back to Council for additional discussion.

## PUBLIC WORKS

### **1. Hiring for Seasonal Position – Resolution 4-22-19-17**

McCallum informed that the City recently approved the hiring of a seasonal employee for 30 hours per week for 13 weeks at \$12.00 per hour. The City received 5 applications and interviewed 2 of the applicants. McCallum said that staff is recommending William Devine for the position and asked that the Council pass resolution 4-22-19-17 supporting his hiring.

**Stieve-McPadden moved to approve Resolution 4-22-19-17 for the hiring of William Devine for the seasonal public works position. McNeilly seconded. Motion passed 3-0.**

### **2. Sewer Jetting and Televising Proposal – Yearly Maintenance**

Kuntz stated that staff is proposing to have about 15,000 linear feet of the sanitary sewer line jetted and televised by Overline and Sons in the amount of \$17,293.28. He informed that the scheduled sewer line areas include: Ash Ave N and S, Canary Avenue, 2<sup>nd</sup> Street NW, Co Road 30, 4<sup>th</sup> Street NE, West Ridge Road, Ridge Road and Hidden Creek Phases 1 and 2. He said that this is annual maintenance. He said that the City budgeted \$25,000 for the maintenance.

**McNeilly moved to approve the project and cost of \$17,293.28 from Overline and Sons to perform the sewer line jetting and television of the scheduled areas. Stieve-McPadden seconded. Motion passed 3-0.**

COUNCIL REPORTS

- Dodge congratulated Kuntz on passing his Wastewater A License Test.
- McNeilly said that the Park Commission held a visioning session for the City of Mayer parks and that it was very informative and useful. Dodge suggested a joint Council/Commission meeting in the future.

ADJOURN

There being no further business, a MOTION was made by Council Member McNeilly and seconded by Council Member Stieve-McPadden to adjourn the meeting at 8:05 p.m. Motion Carried 3/0

\_\_\_\_\_  
Mike Dodge, Mayor

Attest: \_\_\_\_\_  
Margaret McCallum, City Administrator

DRAFT

## MAYER CITY COUNCIL WORK SESSION MINUTES – APRIL 22, 2019

Call Work Session to order at 8:05 p.m. by Mayor Dodge.

PRESENT: Mayor Dodge, Council Members Stieve-McPadden and McNeilly

ABSENT: Council Member Boder and Butterfield

STAFF: City Administrator McCallum. Public Works Kuntz.

ALSO PRESENT: Jim Koerber (T4 Solutions) and Don Wachholz,

### 1. **Grocery Delivery Lockers – T4 Solutions – Jim Koerber**

Jim Koerber of T4 Solutions presented on Temperature Controlled Grocery Lockers. His presentation included the lockers being a solution for grocery delivery to the City of Mayer which doesn't have a grocery store. It would allow for residents to order from a grocery store in a neighboring city and to pick up their groceries when they are able to. The lockers are refrigerated and have freezer sections as well.

Koerber said that this is a relatively new concept and new business. They are still working on the partnership that could be had between grocery stores, the City and the company to install the lockers in needed locations. He explained that the City could purchase and own it, the grocery store could, or there could be a partnership between the two.

McNeilly said that it seemed like a good alternative for residents because delivery of groceries usually requires the residents to be home. Dodge wanted the Koerber to reach out to local grocers to see if there was interest from them to participate. She said that maybe the City would be interested in a partnership. Dodge wanted more information about working together with local stores. McNeilly agreed.

### 2. **Winter Street Parking**

McCallum provided information that was requested by Council that included what other cities do regarding code enforcement.

Dodge explained that he did not see a need to change the code at this time. He said suggested the staff wait a year and reassess after the Public Works Department takes on the snow plowing next winter season. McNeilly agreed.

### 3. **Utility Ponds use for Irrigation – Direction**

McCallum presented this item as one that was presented to a City Council member recently. She informed that a resident had asked if this was a possibility. McCallum said that she talked with City staff about irrigation through the utility ponds, nonetheless that staff felt that while it was possible, advised to not. The reason being that it would require oversight and that the reuse of the pond water could cause more growth of algae, etc. due to more runoff chemicals going into the ponds. In addition, the residents would have to be cognizant of the water level of the pond.

Council agreed that this came to them a few years ago as well and decided then to not allow it. They agreed to continue not allowing this.

Dodge said that he would like to see more coming to the Council soon regarding a pond maintenance plan. He said that maybe at that time, this topic could be revisited.

**4. Payment Service Network – Utility Payment Software –**

McCallum provided a summary about changing utility payment software programs from GovPayNet to Payment Service Network. She explained that the benefits would include the ability for residents to have more informational tools and resources accessible to them. This includes payment history and usage history. It also includes real time billing information. This information is currently not available to residents. The PSN Software would also integrate into the City’s utility software, allowing the transfer for data instead of manual data input. PSN would also allow for more payment options online as well as in person.

McCallum reviewed the payment options and fees with the Council with the current software and proposed software. She informed that the City would need to decide if they would maintain having customers pay the processing fees, if the City would share the cost or take on the entire cost.

Council liked the idea of switching the software from GovPayNet to Payment Service Network. They requested more data information on how much money would be saved in the transition, what the transition plan looked like and how we would educate residents on the change. Staff agreed to provide the additional information at an upcoming meeting.

MEETING ADJOURNED

There being no further business, the work session was adjourned at 8:51 p.m.

Attest: \_\_\_\_\_  
Margaret McCallum, City Administrator

\_\_\_\_\_  
Mike Dodge, Mayor

**ACCOUNTS PAYABLE LIST**

**May 13, 2019**

**Checks: 22250 - \_\_\_\_\_, 5251E - 5267E**

22250	Visa	PW Tools and Equipment, Lodging - PW Conference	\$651.22
22251	MN Pollution Control Agency	Kyle Kuntz_Class A Certification	\$45.00
22252	Bureau of Criminal Affairs	Background Check- Fire Dept.	\$15.00
22253	Robert Wolf	Utility Reimbursement	\$162.80
	American Legal Publishing	Codification of Ordinances - 2016-2018	\$2,718.40
	Aquafix	WWTF Chemicals	\$390.21
	Bobs Repair of Mayer	Purchase of new mower	\$11,344.00
	Grainger	WWTF Drum	\$288.67
	Tom Goepfert	On Call Pay	\$100.00
	Greater America Financial Services	April Copier Lease	\$188.63
	Greater MN Communications	April Utility Billing & Newsletters	\$948.20
	Hach Company	WWTF	\$4,907.50
	Herald Journal Publishing	Ordinance Publications - 227 & 228	\$257.76
	Kevin Nace	Fire Dept - Johnstone Supply - Gas Inspector Device	\$188.16
	Kyle Kuntz	Mileage Reimbursement - Conferences	\$389.64
	Andy Maetzold	Mileage Reimbursement - State FD Conference	\$66.24
	Rod Maetzold	Mileage and Lodging Reimbursement - State FD Con	\$879.44
	Midwest Electric	Community Center Shut Down & Repair/Generator Install	\$600.00
	United Farmers Cooperative	Safety Vest, Tubing and Air Plug	\$70.12
	Widmer Construction	Snow Removal, Brush/Compost Removal	\$2,867.50
	Metro West Inspection	Final Permits - March 2019	\$4,168.97
	Margaret McCallum	Mileage - EDA Class and Conferences	\$303.92
5251E	ADP LLC	ACH Processing Fee - Payroll 7	\$168.58
5252E	ADP LLC	ACH Processing Fee - Payroll 8	\$85.98
5253E	ADP LLC	Employee Payroll	\$6,433.05
5254E	ADP LLC	Payroll Taxes	\$2,682.28
5255E	PERA	Employee PERA Benefits	\$1,269.02
5256E	ADP LLC	Employee Payroll	\$6,433.05
5257E	ADP LLC	Payroll Taxes	\$2,699.56
5258E	Security Bank	ACH Fee for April 2019	\$21.56
5259E	Delta Dental of MN	Employee Dental Benefits	\$261.10

5260E	Preferred One	Employee Health Benefits	\$4,142.35
5261E	Frontier	WWTF - Internet	\$98.18
5262E	frontier	WTP - Internet	\$80.87
5263E	Verizon Wireless	OSH Lift Station	\$14.83
5264E	Verizon Wireless	FD Cell/Tablet	\$41.19
5265E	Verizon Wireless	City Cell Phones	\$243.57
5266E	Xcel Energy	Public Facilities/Lights	\$6,243.91
5267E	PERA	Employee PERA Benefits	\$1,323.61
<hr/>			\$63,794.07

**Resolution 05-13-19-17  
ORDINANCE NO. 230**

**CITY OF MAYER  
CARVER COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING TITLE IX: GENERAL REGULATIONS CHAPTER 92: ANIMALS,  
SECTION 92.01 DEFINITIONS, SECTION 92.02 DOGS AND CATS, SECTION 92.04 IMPOUNDING,  
SECTION 92 DISEASED ANIMALS**

**OFFICIAL SUMMARY**

**MAY 13, 2019**

The following is the official summary of Ordinance No. 230 of the City of Mayer adopted on April 8, 2019, pertaining to animal licensing.

The City of Mayer has amended Title IX: General regulations Chapter 92: Animals, section 92.01 Definitions, Section 92.02 Dogs and Cats, Section 92.04 Impounding and Section 92 Diseased Animals as it relates to animal licensing.

The City has amended sections of the code to no longer require animal licensing in the City of Mayer.

**A PRINTED COPY OF THIS ENTIRE ORDINANCE IS AVAILABLE FOR INSPECTION AND REVIEW BY ANY PERSON AT THE OFFICE OF CITY HALL OF THE CITY OF MAYER LOCATED AT 413 BLUEJAY AVENUE, MAYER, MINNESOTA 55360.**

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Margaret McCallum, City Administrator

Published in the \_\_\_\_\_ on \_\_\_\_\_, 2019.



## **Request for Council Action Memorandum**

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Item: Off-Sale Liquor License – Fill Me Up Convenience Store - 308 Ash Avenue

Meeting Date: May 13, 2019

Presented By: Margaret McCallum, City Administrator

### **Recommendations/Council Action/Motion Requested:**

A motion to approve an off-sale liquor license for the time period of May 13, 2019 – February 28, 2020 for Fill Me Up Convenience Store.

### **Details:**

Fill Me Up will be located at 308 Ash Avenue (Currently Schmidty's Convenience Store). The owner currently has an agreement to purchase the property.

Liquor licenses will be issued upon approval by the State of Minnesota, Alcohol and Gambling Division and upon all conditions of licensing being met in accordance with the City of Mayer ordinances. This includes appropriate fee for each establishment will be paid, certificate of insurance and background checks will be completed by Carver County Sheriff's Department.

Staff is recommending the approval of the Fill Me Up Off-Sale liquor license from May 13, 2019 – February 28, 2020. The background check came back fine.

### **Attachments:**

None.

**CITY OF MAYER, MINNESOTA**

**RESOLUTION 05-13-19-18**

**A RESOLUTION REGARDING THE APPOINTMENT OF JUSTIN HECKSEL TO THE MAYER FIRE DEPARTMENT**

WHEREAS, the City of Mayer made the decision to appoint members to the Fire Department,

WHEREAS, the City and Fire Department need Firefighters,

WHEREAS, a background check was completed by the State of Minnesota, Department of Public Safety, Bureau of Criminal Apprehension,

WHEREAS, Justin Hecksel has passed all requirements of the Mayer Fire Department and the Fire Chief is recommending the appointment of Justin Hecksel

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Mayer, Minnesota, that Justin Hecksel start as a firefighter for the Mayer Fire Department upon approval.

Adopted this May 13, 2019 by the Mayer City Council.

Attest:

\_\_\_\_\_  
Margaret McCallum, City Administrator

\_\_\_\_\_  
Mike Dodge, Mayor



## Memorandum

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**Item: Novel Energy Solutions – Solar Program**

**Meeting Date: May 13, 2019**

Presented By: Margaret McCallum, City Administrator

**Details:**

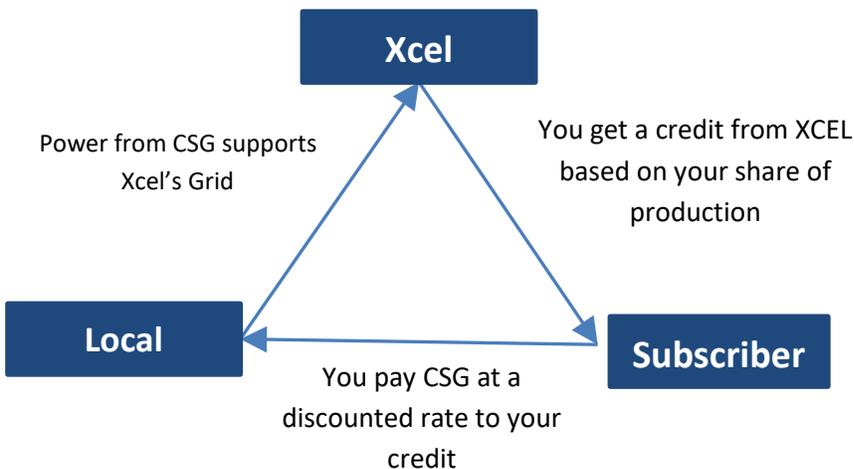
At the April 22, 2019 City Council meeting, Novel Energy presented information on a Value of Solar Program for the City of Mayer.

In 2013, Minnesota legislation directed Minneapolis-based utility, Xcel Energy, to create a program for Community Solar Gardens (CSGs). The program is regulated by MN Public Utility Commission.

The program is referred to as the Value of Solar (VOS) Program. Under the program, Xcel Energy remains the customer's electricity provider. Bill credits are issued on the Xcel Energy invoice based on the subscription amount. There is no cost to the subscriber.

The Xcel Energy Value of Solar Program Bill Credit rate for 2018 projects is 9.76/kWh cents and will escalate each year for 25 years at a fixed rate of 2.27%.

The Customer's Subscription rate will always be a half cent or 1 cent below the VOS Bill Credit Rate, thus guaranteeing a half cent or 1 cent/kWh savings. It is \$0 upfront, No pricing risk and No production risk.



The solar garden that the City of Mayer would use is located outside of Lester Prairie in McLeod County. The City was offered a one cent/kWh discount: 8 year contract, 2-year replacement period, NES finds replacements, extends to 25 years.

- **No Cost to you**
- **Guaranteed Savings(1 cent/kWh-about 10%)**
- **Xcel remains your energy provider**
- **Flexible Terms- 8 year option**
- **Supporting the Environment**

The City of Mayer would (based on average annual usage) subscribe to 597,779 kWhs at 1 cent/kWh. This is estimated to produce an annual savings of about \$5,700/year.

Year	Total Project Energy Production (kWh)	Subscriber Energy Production (kWh)	Bill Credit Rate (\$/kWh)	Estimated Total Bill Credit (\$/yr)	Subscription Rate (\$/kWh)	Subscription Payments (\$/yr)	Estimated Annual Savings (\$/yr)
1	1,785,000	597,779	\$0.09760	\$58,343	\$0.08760	\$52,365	\$5,978
2	1,776,075	594,790	\$0.09980	\$59,360	\$0.08980	\$53,412	\$5,948
3	1,767,195	591,816	\$0.10210	\$60,424	\$0.09210	\$54,506	\$5,918
4	1,758,359	588,857	\$0.10440	\$61,477	\$0.09440	\$55,588	\$5,889
5	1,749,567	585,912	\$0.10670	\$62,517	\$0.09670	\$56,658	\$5,859
6	1,740,819	582,983	\$0.10920	\$63,662	\$0.09920	\$57,832	\$5,830
7	1,732,115	580,068	\$0.11170	\$64,794	\$0.10170	\$58,993	\$5,801
8	1,723,454	577,167	\$0.11420	\$65,913	\$0.10420	\$60,141	\$5,772
9	1,714,837	574,282	\$0.11680	\$67,076	\$0.10680	\$61,333	\$5,743
10	1,706,263	571,410	\$0.11940	\$68,226	\$0.10940	\$62,512	\$5,714
11	1,697,732	568,553	\$0.12210	\$69,420	\$0.11210	\$63,735	\$5,686
12	1,689,243	565,710	\$0.12490	\$70,657	\$0.11490	\$65,000	\$5,657
13	1,680,797	562,882	\$0.12770	\$71,880	\$0.11770	\$66,251	\$5,629
14	1,672,393	560,067	\$0.13060	\$73,145	\$0.12060	\$67,544	\$5,601
15	1,664,031	557,267	\$0.13360	\$74,451	\$0.12360	\$68,878	\$5,573
16	1,655,711	554,481	\$0.13660	\$75,742	\$0.12660	\$70,197	\$5,545
17	1,647,432	551,708	\$0.13970	\$77,074	\$0.12970	\$71,557	\$5,517
18	1,639,195	548,950	\$0.14290	\$78,445	\$0.13290	\$72,955	\$5,489
19	1,630,999	546,205	\$0.14620	\$79,855	\$0.13620	\$74,393	\$5,462
20	1,622,844	543,474	\$0.14950	\$81,249	\$0.13950	\$75,815	\$5,435
21	1,614,730	540,757	\$0.15290	\$82,682	\$0.14290	\$77,274	\$5,408
22	1,606,656	538,053	\$0.15630	\$84,098	\$0.14630	\$78,717	\$5,381
23	1,598,623	535,363	\$0.15990	\$85,604	\$0.14990	\$80,251	\$5,354
24	1,590,630	532,686	\$0.16350	\$87,094	\$0.15350	\$81,767	\$5,327
25	1,582,677	530,022	\$0.16720	\$88,620	\$0.15720	\$83,320	\$5,300
Estimated Total Savings							<b>\$140,812</b>

Novel is a local company from Minnesota with offices in St. Paul, Minnesota.

The model aims to combine the environmental and cost benefits of large scale solar energy production with the individual cost savings of rooftop and ground mount direct solar generation.

### **Historical Solar Farm Consideration and Discussion – 2015**

In April, 2015, the City Council was approached by a company by the name of SunShare. They presented a proposal for the City to subscribe to their solar garden program.

The proposal from Sunshare planned to use 100% solar energy for the City of Mayer. There was no upfront cost and according to SunShare minimal risk (25 years).

It would have been a 78 kW subscription, \$0.11 per-kWh SunShare solar electricity rate and 0% annual escalation on SunShare Rate. They stated that the benefits to Mayer would be about \$950 in savings per year, \$182,150 cumulative savings and \$0 down.

A presentation was made at the April 27, 2015 City Council workshop. It was tabled and asked to be brought to the next meeting.

In July, 2015, the City Council met with SolarStone to discuss installing their own panels at the Wastewater Treatment Plant.

In July, 2015, the Planning Commission looked at an Ordinance that added language regarding solar farms and community solar energy systems (SES). The Ordinance Public Hearing was called for August 4, 2015.

The City Council approved Ordinance 201 Solar Energy on August 10, 2015 to regulate solar farms. The ordinance added definitions for solar energy systems and also allowed solar energy systems in districts as either a permitted accessory use or interim use. The Council felt that it is in the public interest to encourage the use and development of renewable energy systems that have a positive impact on energy conservation with limited adverse impact on nearby properties.

In August 2016, a representative from US Solar discussed an agreement with the City of Mayer. The Council agreed to review the agreement.

At the September 12, 2016 meeting, the City Attorney provided a memorandum on US Solar (see attachment).

It mentioned that the agreement was a 20-year agreement with US Solar. The attorney recommended at the time to seek out and receive at least 2 solar proposals. The memo also mentioned that in the first year of the agreement, the City would have been “under water”, meaning that the City would be paying more to US Solar (initially) per kWh than it would be receiving in credit back. It explained that there was no assurances that the bill credit rate would increase over the life of the US Solar Agreement. US Solar couldn’t make certain that the city would provide an economic benefit by entering into the Agreement.

“The City is essentially buying a hedge against increased NSP electric utility rates on the assumption that any increase in the NSP utility rates approved by the MPUC will also include an increased bull credit to the City.” There was no certainty that it would occur and it was seen as a risk to the City.

At the meeting, the Council decided not to enter into a contract with US Solar based on comments from the City Attorney.

**Discussion on US Solar Contract** – City Staff presented the findings of the City Attorney in reference to the agreement from US Solar. The attorney found the following items for the Council to consider:

1. The City seeks at least one more proposal.
2. The City is “underwater” in year one of the proposal.
3. Concerns about the rates and payments
4. Term
5. The City’s solar allocation may not be fulfilled
6. Termination rights for US Solar are greater than the rights of termination for the City.
7. US Solar can assign or sell the subscription with the City
8. Arbitration should be with the American Arbitration Association
9. Several exhibits are blank

After some discussion a MOTION was made by Council Member Boder and seconded by Council Member Osborn to not enter into an agreement with US Solar based on the Attorney’s comments. Motion carried 5/0.

**Attachments:**

City Attorney Memo on U.S. Solar

Previous U.S. Solar Proposal

Novel Energy Presentation

Proposed Novel Energy Agreement – Attorney and Staff Reviewed

Solar Energy News Article.

# MAYER *Minnesota*

**Minnesota Community Solar Garden Program**  
4/15/19



- This Community Solar Garden (CSG) program was created in 2013 with direction from Minnesota Legislature and is regulated by the Public Utilities Commission
- **\$0 upfront**
- **No pricing risk-** guaranteed \$[Discount Rate]/kWh discount
- **No production risk**
- Solar panels are located off-site and you still receive power from Xcel
- A Subscription amount of **597,779 kWhs will produce an estimated savings of about \$5,700/year.**

	Discount Rate	Initial Term*	Term Replacement Period
<b>Option 1</b>	\$0.01 / kWh	8 Year	2 Year
<b>Option 2</b>	\$0.005 / kWh	5 Year	2 Year

*\*You can choose to take advantage of these savings for up to 25 years*



# About Novel Energy Solutions (NES)

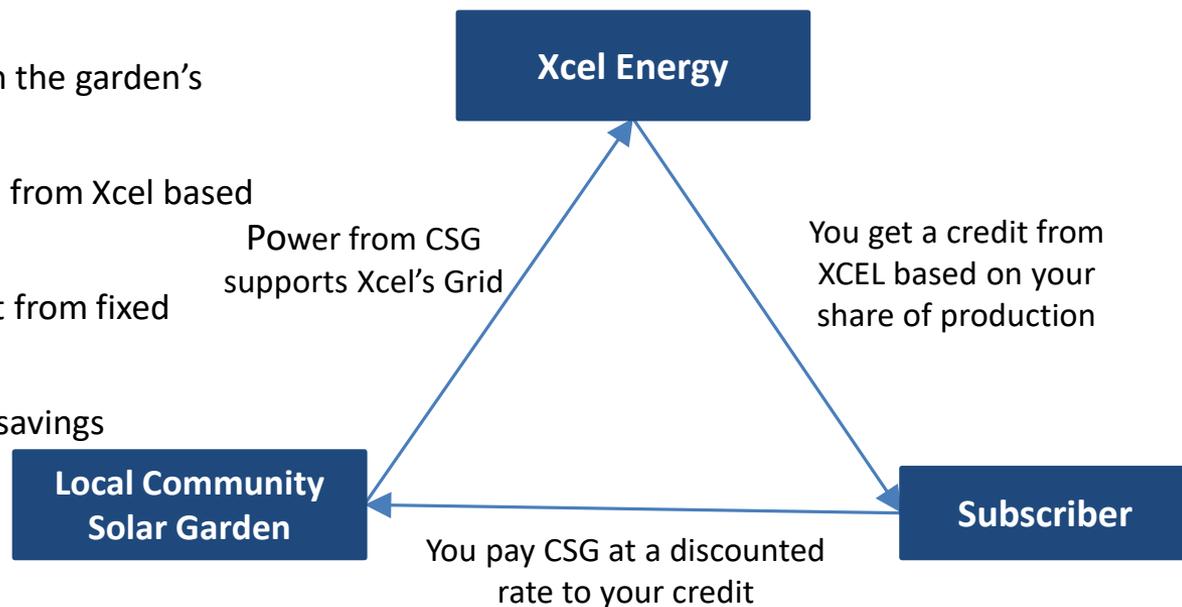
- ❑ Leading Minnesota integrated energy management company which includes complementary businesses-- community solar garden development, solar project construction, solar project finance and energy conservation
- ❑ Founded in 2011 by Cliff, Ralph and Mena Kaehler. The Kaehler family are active farmers (Purebred cattle) with over a hundred and thirty years of history in the southern Minnesota area.
- ❑ Novel Energy Solutions (“NES”) are leaders in the Minnesota solar market



Buhl Hog Farm (250 KW)

# Community Solar Garden Program

- ❑ The Community Solar Garden model aims to combine the environmental and cost benefits of large scale solar energy production with the individual cost savings of rooftop or ground mount direct solar generation
- ❑ Participating local businesses, organizations and residents can manage electric costs with no upfront investment and no production risk
- ❑ In 2013, Minnesota legislation directed Minneapolis-based utility, Xcel Energy, to create a program for community solar gardens (“CSGs”). The program is regulated by the MN Public Utility Commission
  - Each CSG must have a minimum of five subscribers with no one subscriber accounting for more than 40% of generation
  - CSG subscribers must be located in the garden’s county or adjacent counties
  - CSG subscribers receive bill credits from Xcel based on their subscription size
  - Subscribers to NES gardens benefit from fixed electricity rates savings
  - NES Subscription anticipated 10% savings



# Subscription Opportunity

## Subscription Pricing

### Opportunity to lock in Savings

- The 2018 VOS bill credit is \$0.0976/kWh with annual escalation of 2.27%
- Subscription rate for the first year is set based on a one cent/kWh discount to the VOS rate on the commercial operations date of the applicable CSG
- **In future years the subscription rate WILL always remain one cent below the VOS bill credit rate.**
- Billing is monthly and the City of Mayer will only pay for electrical credits actually received

## Additional Benefits

### Creates environmental marketing opportunities

- The City of Mayer can support green energy AND lower electricity rates
- Can be an important marketing tool, now and particularly in the future as more pressure is put on organizations for environmental leadership

## Other Terms

### Assignment and Termination

- Allows assignment of contract to new subscriber at limited, administrative charge
- Lowered termination fees in the event of moving business and no termination fees if terminated due to NES fault

## Flexibility

### NES is open to discussing the City of Mayer's needs and priorities and creating a custom subscription solution

Year	Total Project Energy Production (kWh)	Subscriber Energy Production (kWh)	Bill Credit Rate (\$/kWh)	Estimated Total Bill Credit (\$/yr)	Subscription Rate (\$/kWh)	Subscription Payments (\$/yr)	Estimated Annual Savings (\$/yr)
1	1,785,000	597,779	\$0.09760	\$58,343	\$0.08760	\$52,365	\$5,978
2	1,776,075	594,790	\$0.09980	\$59,360	\$0.08980	\$53,412	\$5,948
3	1,767,195	591,816	\$0.10210	\$60,424	\$0.09210	\$54,506	\$5,918
4	1,758,359	588,857	\$0.10440	\$61,477	\$0.09440	\$55,588	\$5,889
5	1,749,567	585,912	\$0.10670	\$62,517	\$0.09670	\$56,658	\$5,859
6	1,740,819	582,983	\$0.10920	\$63,662	\$0.09920	\$57,832	\$5,830
7	1,732,115	580,068	\$0.11170	\$64,794	\$0.10170	\$58,993	\$5,801
8	1,723,454	577,167	\$0.11420	\$65,913	\$0.10420	\$60,141	\$5,772
9	1,714,837	574,282	\$0.11680	\$67,076	\$0.10680	\$61,333	\$5,743
10	1,706,263	571,410	\$0.11940	\$68,226	\$0.10940	\$62,512	\$5,714
11	1,697,732	568,553	\$0.12210	\$69,420	\$0.11210	\$63,735	\$5,686
12	1,689,243	565,710	\$0.12490	\$70,657	\$0.11490	\$65,000	\$5,657
13	1,680,797	562,882	\$0.12770	\$71,880	\$0.11770	\$66,251	\$5,629
14	1,672,393	560,067	\$0.13060	\$73,145	\$0.12060	\$67,544	\$5,601
15	1,664,031	557,267	\$0.13360	\$74,451	\$0.12360	\$68,878	\$5,573
16	1,655,711	554,481	\$0.13660	\$75,742	\$0.12660	\$70,197	\$5,545
17	1,647,432	551,708	\$0.13970	\$77,074	\$0.12970	\$71,557	\$5,517
18	1,639,195	548,950	\$0.14290	\$78,445	\$0.13290	\$72,955	\$5,489
19	1,630,999	546,205	\$0.14620	\$79,855	\$0.13620	\$74,393	\$5,462
20	1,622,844	543,474	\$0.14950	\$81,249	\$0.13950	\$75,815	\$5,435
21	1,614,730	540,757	\$0.15290	\$82,682	\$0.14290	\$77,274	\$5,408
22	1,606,656	538,053	\$0.15630	\$84,098	\$0.14630	\$78,717	\$5,381
23	1,598,623	535,363	\$0.15990	\$85,604	\$0.14990	\$80,251	\$5,354
24	1,590,630	532,686	\$0.16350	\$87,094	\$0.15350	\$81,767	\$5,327
25	1,582,677	530,022	\$0.16720	\$88,620	\$0.15720	\$83,320	\$5,300
Estimated Total Savings							<b>\$140,812</b>

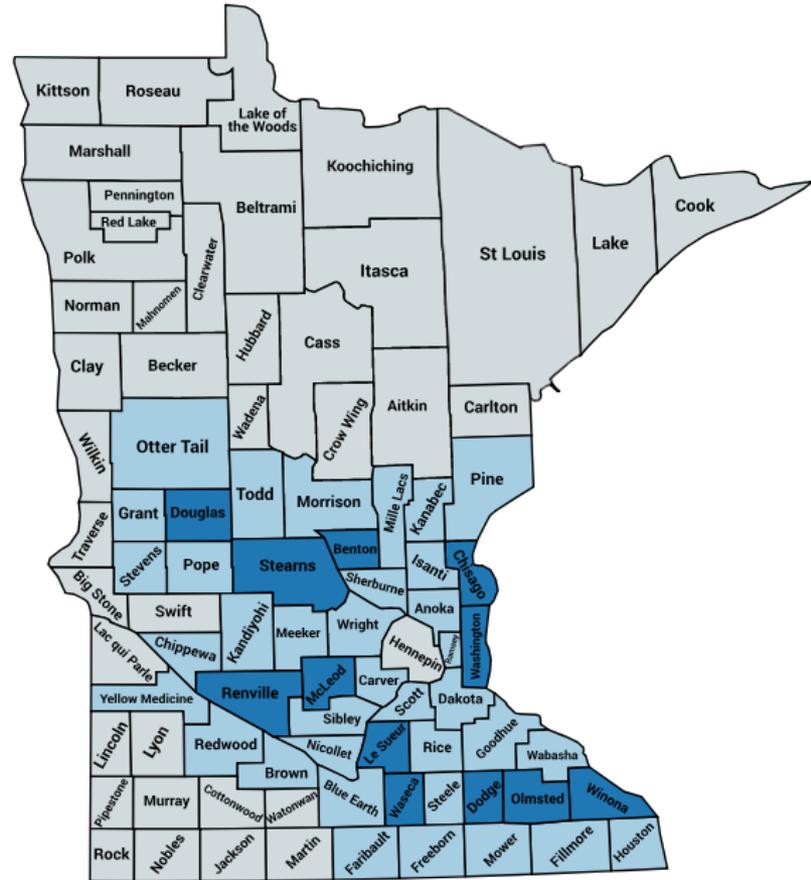
# Environmental Equivalencies Calculator



Pounds of coal burned	Barrels of oil consumed	Passenger vehicles driven for 1 year
462,128	979	89.7

Source: [www.epa.gov/energy/greenhouse-gas-equivalencies-calculator](http://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator)

County
Benton
Chisago
Dodge
Douglas
Douglas
Le Sueur
McLeod
Olmsted
Renville
Stearns
Waseca
Washington
Winona



- Subscription Eligible Counties
- NES Project Counties

# Contacts



## Lead Contact:

Rick Masloski, Business Development Exec.  
612-817-6200  
rick.masloski@novelenergy.biz

## Additional Contact:

Cliff Kaehler, CEO  
507-272-5401  
cliff.kaehler@novelenergy.biz

**VOS Commercial  
Solar Garden Subscription Agreement**

This Solar Garden Subscription Agreement is entered into on \_\_\_\_\_.

Customer, **City of Mayer** (the “**Customer**”), agrees to subscribe to a community solar garden (“**CSG**”) provided under the MN Value of Solar (“**VOS**”) solar subscription program in accordance with Novel Energy Solutions L.L.C. (the “**Provider**”) VOS Terms and Conditions set forth herein.

Customer wishes to subscribe to and Provider will reserve a maximum of 33 % (the “**Percentage Allocation**”) of the monthly electricity output from the CSG for an estimated total **Subscription Amount** of 469 kilowatts (“**KW**”), which is estimated to produce up to 597,779 kilowatt hours (“**kWhs**”) of electricity in the first year of operation.

Xcel will provide, and the Public Utility Commission (“**PUC**”) shall approve, a **Bill Credit Rate (“BCR”)** applicable to each CSG. The Initial Estimated BCR is nine hundred seventy-six ten-thousandths (\$0.0976) cents per kWh of solar production.

Customer agrees to pay the **Subscription Rate**, which is defined as the difference between the BCR and Discount Rate. The **Discount Rate** shall be equal to one cent (\$0.01) per kWh off of the applicable Bill Credit Rate. The Initial Estimated Subscription Rate is eight hundred seventy-six ten-thousandths (\$0.0876) cents per kWh.

Customer will be invoiced monthly for the production posted to utility account(s) since the previous invoice date. Customer agrees to pay monthly invoices via an ‘automatic funds transfer’. The first invoice will be issued two months after the garden’s Commercial Operation Date. The Subscription Payment will be calculated by multiplying the total CSG production by the Percentage Allocation and the Subscription Rate.

The parties acknowledge the attached VOS Commercial Terms and Conditions and agree to their incorporation into the terms of this Agreement.

The Parties agree to receive notice at the Customer and Provider points of contact noted below:

<u><b>Customer</b></u>	<u><b>Service Address</b></u>	<u><b>Provider</b></u>
City of Mayer Attn: Margaret McCallum 413 Bluejay Ave Mayer, MN 55360-0102 margaret.mccallum@cityofmayer.com 952-657-1502	See Exhibit A	Novel Energy Solutions 1633 South Robert Street, Suite A West St. Paul, MN 55118 info@NovelEnergy.biz 612-345-7188

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date noted herein.

**City of Mayer**

**Novel Energy Solutions L.L.C.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City Administrator

\_\_\_\_\_  
Title

1. **Services:** Subject to the terms hereof, Novel Energy Solutions L.L.C. (“NES”), agrees to provide the Customer with Xcel Value of Solar (“VOS”) solar subscription services (hereafter, “Services”) as specified in the VOS Commercial Subscription Agreement provided to the Customer to which these terms and conditions are attached (collectively, the “Agreement”).
2. **Term:** The term of this Agreement shall commence on the date upon which the applicable community solar garden is authorized by Xcel to generate and deliver electrical energy to the transmission system, the Commercial Operation Date (“COD”); and shall terminate on the date which is twenty-five (25) years thereafter.
3. **Effective Date:** The Effective Date of each Agreement shall be either the COD or the date of execution of the Agreement, whichever date occurs later.
4. **Termination:** Customer may terminate this Agreement upon the occurrence of any of the following:
  - 4.1. **Early Termination Option after 96 Months:** If anytime after eight (8) years the customer wishes to terminate the agreement they may do so without penalty by giving Provider twenty-four (24) months notice. Upon giving notice, Customer may leave at the earlier of (a) Provider finding a replacement subscriber or (b) twenty-four (24) months after giving notice. For clarity, this option is only available starting day one (1) of the ninth (9<sup>th</sup>) year following the Effective Date, and without a replacement subscriber the earliest Customer may leave without penalty is the end of the tenth (10<sup>th</sup>) year.
  - 4.2. **Ceasing to be an Eligible Xcel Customer:** If at any time the Customer moves or relocates outside the utility service area that is eligible to subscribe to the CSG and is no longer eligible to subscribe to the CSG, the customer may leave with a termination fee of two thousand and five hundred dollars (\$2,500).
  - 4.3. **No Fee Termination:** Customer may terminate this Agreement without a fee only under the following circumstances:
    - 4.3.1. In the event the COD is not achieved within twenty four (24) months after the date of execution of this Agreement, either Party may terminate this Agreement, without liability, by providing the other Party with a written notice of termination.
    - 4.3.2. In the event Provider breaches, fails to perform, or fails to comply with any representation, warranty, obligation, covenant or agreement described in this Agreement and such failure continues for a period of forty five (45) days after written notice thereof.
5. **Subscription Amount:** The Subscription Amount is defined as the kilowatts (kW) the Customer subscribes to in each community solar garden (CSG). This is calculated by multiplying the Percentage Allocation by the total CSG production capacity as determined by the Xcel and independent testing.
6. **Percentage Allocation:** This term is defined as the maximum amount of the CSG solar electric production Provider will reserve for customer’s Subscription Amount.
7. **Discount Rate:** The Discount Rate off of the Bill Credit Rate is \$0.01 / kWh (one cent per kilowatt hour).
8. **Bill Credit Rate:** The Bill Credit Rate (BCR) will change annually throughout the Term of this Agreement. A new BCR shall be proposed by Xcel to the PUC on or about the first quarter of each calendar year. Once a BCR is set for a CSG, that BCR will not change aside from the predetermined annual increase. Any changes to the BCR do not impact the Discount Rate.
  - 8.1. The BCR is credited to the Customer’s utility bill based upon the production of the CSG(s) to which the Customer is subscribed. The Bill Credit amount shall be calculated by Xcel by multiplying the BCR by the kilowatt hours (kWhs) produced by the CSG each billing period and by the CSG Percentage Allocation of corresponding Customer.
9. **Bill Credit Exceptions:** If the amount of Bill Credits exceeds the amount owed on Customer’s Xcel electric utility bill in any billing period, the excess shall be governed by the Customer’s utility contract with Xcel, or applicable law.
10. **Subscription Rate:** The Subscription Rate shall be determined by subtracting the applicable Discount Rate from the applicable BCR at that time.
11. **Subscription Payment:** Beginning with the second calendar month following the Commercial Operation Date, NES shall invoice Customer for the Monthly Subscription Payment for the bill credits posted to Customer’s account since the prior invoice date. Customer shall make all payments through an “automatic transfer of funds” prior to the invoice due date.
12. **Monthly Subscription Payment:** The Monthly Subscription payment is calculated by multiplying the total CSG production accrued since the prior invoice date by the Percentage Allocation and Subscription Rate.
13. **Outstanding Balances/Interest:** Any amounts not paid prior to the invoice due date will accrue interest at a rate of eight percent (8%) per annum (and if less than eight percent (8%) per annum, the maximum rate permitted by law) from the invoice due date until NES receives payment.
14. **Outages:** NES shall not invoice Customer during CSG outages lasting longer than twenty (20) consecutive days. NES shall provide written notice to Customer when it becomes aware that the corresponding CSG is out of service for longer than two (2) consecutive days, which notice shall include an estimate of how long the outage will last and the estimated loss of

electricity production. Any outage will be reflected in the Annual Reconciliation.

- 15. Annual Reconciliation:** Customer's Subscription Payments are subject to an annual reconciliation at least twelve (12) full months following the Effective Date which is submitted by NES to Customer no later than ninety (90) days after the end of each calendar year (each, an "Annual Reconciliation"). The annual Subscription Payment due for the prior calendar year (or portion thereof) shall equal the product of: (i) the Percentage Allocation, (ii) the actual number of kWhs the corresponding CSG generated throughout such calendar year (or portion thereof), and (iii) the Subscription Rate. The payment will occur within 30 days of the date Xcel issues payment for the surplus credits remaining in Customer's account. For clarity, if the CSG produces more than estimated Customer will owe Provider a payment, and if the CSG produces less than estimated the Provider will owe Customer a payment.
- 16. Subscriber Eligibility Requirements:** As a condition precedent to entering into this Agreement, Customer must meet all applicable Subscriber Eligibility Criteria as provided in MN § 216B.1641 and VOS program regulations. Should Customer no longer qualify under the Subscriber Eligibility Criteria, this Agreement may be subject to termination by NES, Xcel, or a governmental authority having jurisdiction over the Xcel Solar\*Rewards Community Program.
- 17. Annual Reports:** In the first March which is at least twelve (12) full months following the Effective Date, and each March thereafter until the expiration or earlier termination of this Agreement, NES shall provide Customer an annual report describing the annual energy production of the Project for the prior calendar year.
- 18. Environmental Attributes, Tax Credits, etc.** Customer's purchase of the Subscription Amount will not include benefits or derivatives of Renewable Energy Credits ("RECs") or green tags, carbon offset credits, rebates, unsubscribed electrical energy, tax credits, tax or environmental attributes associated with owning or operating the Project, or any other attributes of owning the Project (collectively "Environmental Attributes"). Customer acknowledges and agrees that all RECs and Environmental Attributes shall be retained by NES and that NES will be required to transfer ownership of all RECs to Xcel pursuant to the CSG Contract. All unsubscribed electrical energy generated by the Project shall be treated as unallocated and Xcel will purchase all unallocated energy from NES at the applicable Tariff rate. In addition, Customer agrees to reasonably cooperate with NES so that NES may claim any Environmental Attributes from the Project.
- 19. Transfer and/or Assignments:** No Party may assign or transfer this Agreement except as follows:
- 19.1. Customer Assignment or Transfer:** Customer may only assign or transfer this Agreement with NES's prior written approval, which approval is in NES's sole and absolute discretion, and upon Customer's payment to NES

of a two hundred fifty dollar (\$250.00) "Assignment or Transfer Fee," and Customer's payment to NES of all amounts due and owing to NES after reconciliation of the Monthly Subscription Payments for the period prior to the effective date of the assignment or transfer. Upon the execution of Customer's transfer request, neither NES nor Xcel shall have any liability to Customer or be required to refund Customer any money under this Agreement. In the event the Customer transfers a portion of its subscription, the transfer fee shall be prorated. Customer shall not profit from, or receive any payment as a result of, any assignment or transfer of this Agreement.

**19.2. Customer New Service Address within Xcel:** The Parties agree this Agreement shall remain in full force and effect and automatically transfer without any fee to Customer's new Service Address in the event Customer's Service Address changes, provided Customer remains an Xcel customer eligible to participate in the corresponding CSG under Minn. Stat. § 216B.1641 and Customer continues to satisfy the Subscriber Eligibility Criteria.

**19.3. NES' Assignment, Transfer, or Reallocation:** NES may assign or transfer this Agreement to any affiliate, financial institution, or entity without providing Customer prior notice and without obtaining Customer's prior consent, and upon any such assignment or transfer, NES shall be released from all future obligations under this Agreement. NES may transfer or allocate this Agreement and/or Subscription Amount to multiple CSG's and upon such transfer or reallocation will provide Customer updated disclosure information pursuant to Subscriber Agreement.

## **20. Default & Remedies:**

### **20.1. Events of Default:**

**20.1.1. Events of Default.** The following shall constitute an "Event of Default":

- 20.1.1.1.** A Party fails to make any payment due under this Agreement and such failure continues for a period of forty-five (45) days;
- 20.1.1.2.** A Party breaches, fails to perform, or fails to comply with any representation, warranty, obligation, covenant or agreement described in this Agreement and such failure continues for a period of forty-five (45) days after written notice thereof by the other Party;
- 20.1.1.3.** A Party has provided false or misleading financial or other information to enter into this Agreement;
- 20.1.1.4.** Customer assigns, transfers, encumbers, or sells this Agreement or any part of its Subscription Amount or Bill Credits in violation of Transfers and/or Assigns section; or
- 20.1.1.5.** Customer makes an assignment for the benefit of creditors, admits in writing its insolvency, or is subject to a petition for

dissolution or reorganization, voluntary or involuntary, under the U.S. Bankruptcy Code.

**20.2. Remedies:** Upon the occurrence of an Event of Default, NES may take any rights and/or remedies available to it at law or in equity. All rights, powers, and remedies provided under this Agreement are cumulative and not exclusive of any rights, powers, or remedies provided by applicable law. NES may terminate the agreement and replace the defaulting Customer, which will not waive payments owed or default fees.

**20.3. Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorney's fees and all other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

## 21. Limitation of Liability, Arbitration, Indemnification

**21.1. Limitation of Liability:** Except as provided in the Early Termination and Transfer and/or Assigns sections with respect to Customer's liability upon termination or transfer of the Agreement, no Party shall be liable to the other Party for any indirect, special, punitive, exemplary, incidental, or consequential damages, whether arising in contract, tort, under statute, or in equity, and each Party hereby waives its rights to any such damages. To the maximum extent permitted by law, NES' liability arising under or in connection with this agreement cannot exceed the annual reconciliation amount.

**21.2. NO WARRANTY: EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NES MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE PROJECT OR ITS OBLIGATIONS HEREUNDER. NES DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NES DOES NOT WARRANT OR GUARANTEE THE AMOUNT OF ELECTRICITY PRODUCED BY CSG OR CUSTOMER'S PERCENTAGE ALLOCATION.**

**21.3. Arbitration:** Any dispute, disagreement, or claim between Customer and NES arising out of or in connection with this Agreement shall be submitted to final and binding arbitration, in accordance with the Consumer Arbitration Rules of the American Arbitration Association. This Agreement to arbitrate is governed by the Federal Arbitration Act. This arbitration clause replaces the right to participate in a class action or similar proceeding.

**21.4. Indemnification:** To the maximum extent permitted by law, each Party agrees to indemnify, protect, defend, and hold harmless the other Party and its

successors and assigns, and their employees, officers, directors, and agents, from any and all damages, losses, claims, costs, or expenses (including reasonable attorneys' fees) or any liability resulting from any action or suit by any third party, of any kind resulting from the failure of such Party to comply with any of the terms or conditions of this Agreement applicable to such Party.

## 22. Miscellaneous:

**22.1. Force Majeure:** Except as specifically provided in this Agreement, if by reason of Force Majeure, NES is unable to carry out, either in whole or in part, any of its obligations described in this Agreement, NES shall not be deemed to be in default during the continuation of such inability, provided that, within a reasonable time after the occurrence of the Force Majeure event, NES gives Customer notice describing the particulars of the occurrence and the anticipated period of delay, and uses reasonable efforts to remedy the cause(s) preventing it from carrying out its obligations. "Force Majeure" as used in this Agreement means any event or circumstances beyond the reasonable control of NES not resulting from NES's negligence.

**22.2. Waiver:** Any delay or failure of a Party to enforce any of the provisions of this Agreement, or to require performance by the other Party of any of the provisions of this Agreement, shall not be construed to

**22.2.1.** be a waiver of such provisions or a Party's right to enforce that provision; or

**22.2.2.** affect the validity of this Agreement.

**22.3. Severability:** If any portion of this Agreement is determined to be invalid or unenforceable in any respect under applicable law, the remainder of this Agreement shall not be affected thereby, and each term, covenant, or condition of the Agreement will be valid and enforceable to the fullest extent permitted by applicable law, unless such invalidity or unenforceability frustrates or negates an essential purpose of this Agreement.

### 22.4. Notices:

**22.4.1.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed delivered:

**22.4.1.1.** upon receipt, when delivered personally;

**22.4.1.2.** upon receipt, when sent by email (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or

**22.4.1.3.** on the second day after mailing if mailed to the parties to whom notice is to be given, by first class mail, postage prepaid, and properly addressed to the Provider address noted within the Subscriber Agreement page.

**22.4.2.** Any Party may change the address for purposes of this Section by giving the other written notice of the new address in the manner set forth above.

**22.5. Entire Agreement:** This Agreement and all documents referenced herein contain the entire agreement between Parties with respect to the subject matter hereof and supersede all other understandings or agreements between the Parties relating to the subject matter hereof.

**22.6. Amendments:** This Agreement may not be amended except under the following circumstances:

**22.6.1.** Prior to COD, NES may amend this Agreement without the prior written consent of Customer, provided, that any such amendment shall not alter the subscriber discount rate, contract length, termination provisions, billing mechanics, customer transfer options, eliminate arbitration as a dispute mechanism, or any key default provision.

**22.7. Binding Effect:** This Agreement is binding upon the Parties and their successors and permitted assigns.

**22.8. Survival:** The provisions of Limitation of Liability, Arbitration, Indemnification section of this Agreement shall survive the expiration or earlier termination of this Agreement.

**22.9. Governing Law:** The Agreement is made in the state of Minnesota and will be governed by Minnesota law, without regard to principles of conflicts of law, together with any applicable federal law.

**22.10. Data Privacy:** NES acknowledges that it and its employees, owners, officers, directors, agents or representatives, in the course performance under this Agreement, may receive, acquire, have access to, or be exposed to "Government Data," as that term is used in the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 ("MGDPA"). NES hereby agrees that it must meet the requirements of the MGDPA as a contracting party under Minn. Stat. § 13.05, subdivision 6. NES agrees that it will collect, distribute, publish, maintain, and store any Government Data only in accordance with the provisions of the MGDPA. NES' obligation under this paragraph survives the termination of this Agreement.

**22.11. Counterparts:** This Agreement may be executed and delivered in identical counterparts by exchange of electronic copies showing the signatures of the Parties, which shall constitute originally signed copies of the same Agreement requiring no further execution. Each counterpart, when assembled, will be a complete original and fully effective instrument. Any acceptance of this Agreement by affirmation through a DocuSign Electronic Signature, or similar system, shall be deemed a binding acceptance of this Agreement and shall be valid as a signature.

**22.12. Headings:** The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

**Exhibit A**

**City of Mayer Service Address List**

<b>Account</b>	<b>Premise</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>
51-4184407-3	302210683	15300 County Road 30	Mayer	MN	55360
51-4184407-3	302383483	400 Ash Ave N	Mayer	MN	55360
51-4184407-3	303044321	413 Bluejay Ave	Mayer	MN	55360
51-4184407-3	303630327	2073 Old Schoolhouse Rd	Mayer	MN	5536
51-4184407-3	303676447	669 Shimmcor St	Mayer	MN	55360
51-4184407-3	303757106	323 Shimmcor St	Mayer	MN	55360
51-4184407-3	304034263	250 Bluejay Ave	Mayer	MN	55360
51-4184407-3	304058791	5301 Red Barn Rd	Mayer	MN	55360
51-4184407-3	304083696	413 Bluejay Ave	Mayer	MN	55360
51-4184407-3	304111437	202 Ash Ave N	Mayer	MN	55360

## City of Mayer Summary (4/12/19)

### Novel Energy Solutions (NES) Value of Solar (VOS) Program

- ❑ In 2013, Minnesota legislation directed Minneapolis-based utility, Xcel Energy, to create a program for community solar gardens (“CSGs”). The program is regulated by the MN Public Utility Commission
  - The current program is referred to as the Value of Solar (VOS) Program
  - Under the program Xcel Energy remains the customer’s electricity provider
  - Bill credits are issued on your Xcel Invoice based on your subscription amount
  - **NO Cost to the Subscriber**
- ❑ The Xcel VOS Bill Credit rate for 2018 projects is 9.76/kWh cents and will escalate each year for 25 years at a fixed rate of 2.27%.
- ❑ Customer's Subscription rate will **always be a half cent or 1 cent** below the VOS Bill credit rate thus **guaranteeing** a half cent or 1 cent/kWh savings
- ❑ Offering Options
  - One cent/kWh discount: 8-year contract, 2-year replacement period, NES finds replacement, extends to 25 years
  - Half cent/kWh discount: 5-year contract, 2-year replacement period, NES finds replacement, extends to 25 years
- ❑ Locally owned Minnesota made company with offices in St. Paul, MN
- ❑ One of the largest CSG developers in the country with over 100 MW of CSGs developed
- ❑ Can be an important marketing tool, now and particularly in the future as more pressure is put on organizations for environmental leadership
- ❑ **Subscribing to 597,779 kWhs at 1 cent/kWh will produce an estimated annual savings of about \$5,700/year**



Winona, MN (350kWs)

# More cities across Minnesota are turning to renewable sources of energy

Solar, wind and hydro fill increasing roles in municipal power grids

By **Matt McKinney** Star Tribune staff

JUNE 23, 2018 — 7:39PM



Aaron Lavinsky, Star TribuneA 220-kilowatt solar array powers the St. Cloud Wastewater Treatment Plant, along with a biodigester that turns sewage into energy.

Text size

ST. CLOUD – The sewage plant in this city does something even a non-engineer might find remarkable: It makes so much of its own energy that on some days, when the sun shines bright, the plant’s managers don’t need to buy electricity.

Instead, they sell it.

That’s despite the fact that such plants are notorious energy hogs, burning up the equivalent of a small neighborhood’s monthly electrical use every single day to move and clean city water.

In St. Cloud, though, a pair of powerful solar arrays and a state-of-the-art biodigester that turns sewage into electricity, heat and fertilizer sometimes generate more power than the plant can use.

That happened for the first time on April 12 of last year. Since then, it's happened on 30 additional days, most recently on June 5.

Those "net zero" days in St. Cloud are among a wave of positive anecdotes from municipalities across the state about early efforts to adopt renewable energy. Driven by favorable economics and, to a lesser extent, constituent proddings, many cities have turned to solar and other renewables so quickly that even the people pushing for the change say they're surprised.

"It comes down to how can you say 'no' to saving money and doing something for the environment," said Abby Finis, senior energy planner with the [Great Plains Institute](#) of Minneapolis.

That momentum was driven by the state's 2007 renewable energy standard and solar energy laws passed in 2013 that require public utilities to generate 1.5 percent of electricity from solar by 2021, said Matt Privratsky of Fresh Energy, a Minnesota nonprofit that advocates for renewables.

Solar has grown [so quickly in Minnesota](#), in fact, that between 2016 and 2017 the amount of solar power produced didn't just double or triple, but grew by a factor of 72, according to the Minnesota Department of Commerce. That was enough to raise solar power from .03 percent of all electricity generated in the state in 2016 to 1.2 percent a year later.

The surge has prompted several Minnesota city governments, [including Minneapolis](#), to set bold goals to go 100 percent renewable by a set date.

Of the municipalities racing to get there, St. Cloud may be the leader. Its subscriptions to solar gardens and use of geothermal and conservation measures have it claiming an 83 percent renewable rate for the city government. (This does not include private homes or businesses.)

"Our goal was to be aggressive because we knew what the potential was, particularly in the area of solar," said St. Cloud Mayor Dave Kleis.

As recently as 2014, the city government used just 5 percent renewables for its electrical demand, but that was also the year that the St. Cloud utilities department laid plans to dramatically improve the sewage plant's efficiency. Those plans soon spread across other city departments, and with Xcel Energy's help, St. Cloud began a comprehensive review of energy use.

The city has since subscribed to 32 solar gardens — at least 20 commissioned last year alone — for a total of 23 million kilowatt-hours of solar energy, or enough to meet about three-quarters of demand.

Solar panels were also installed on the roof of the police headquarters, a fire station, a senior center and three other city buildings. A conversion to LED helped cut in half electrical use for streetlights between 2015 and 2017. Efficiencies at the sewage plant lowered its power demands as the new biodigester and solar panels came online. The public transportation system, meanwhile, converted nearly two-thirds of its bus fleet to compressed natural gas. That lowers carbon emissions and has saved St. Cloud Metro Bus about \$450,000 in fuel costs over the past three years.

The savings from the solar garden subscriptions alone amount to \$28 million over 25 years, according to a city analysis. The sewage plant spends about \$400,000 a year less for electricity, money that for 14 years will go to pay a bond issued for the solar panels and biodigester. After that, the city can keep the savings.

And none of these calculations include the city's long-running hydroelectric plant, which generates nearly twice as much electricity as the city needs every day. All of that power goes to Xcel Energy for use on the grid, so the city hasn't considered it in their renewables calculations.

#### Renewables elsewhere

Few cities in Minnesota can match St. Cloud, but Minneapolis might come closest, where measures already underway will push the city government's use of renewables to about 65 percent by the end of this year.

St. Paul stands at about 25 percent renewable and has subscribed to solar gardens that, once built and put online, will raise the city's number closer to 50 percent. Among other large cities: Mankato will hit 52 percent by next year, Rochester is at about 17 percent and Duluth about 14.

"It's not just the right thing to do, it actually makes a lot of sense financially to do it," said Alison Zelms, Mankato's deputy city manager. Her city will save \$273,000 a year starting in 2019 thanks to subscriptions to solar gardens, a pair of city-owned solar arrays and a suite of conservation measures that include installing LED lights.

Smaller cities have switched to renewables, too. In Red Wing, the city government approved solar garden subscriptions in 2016 that would cover 100 percent of municipal demand. So far, about 40 percent of the gardens have been built, enough for the city to save about \$33,000 on its power bill last year. Once all the gardens are online, the city expects to save \$6.6 million over 25 years.

Meanwhile, a five-megawatt solar garden that went online in February 2017 helps power the Red Wing School District, which expects to save \$7.7 million over 25 years.

In Inver Grove Heights, City Administrator Joe Lynch said his city both subscribed to solar gardens and installed rooftop solar on city buildings, eventually finding that the latter didn't deliver the predicted savings while the solar gardens did. He said conversations are now underway about how to raise their renewable electricity rate of about 48 percent, perhaps by saying 'yes' to one of the solar vendors who call him pitching more solar gardens.

"We're being petitioned regularly," said Lynch.

In Woodbury, the city's subscriptions to solar gardens are expected to deliver about \$67,000 a year in savings, or about \$1.69 million over the life of a 25-year contract. The city recently signed up for more solar gardens and expects to have about 70 percent of its electrical demand matched by its subscriptions.

"Everybody has been really happy with the way that this is going," said Jen McLoughlin, the city's sustainability specialist. "We are seeing the savings."

The city installed its own solar panels on the public safety building, but analysis continues on whether that's a better move than joining more solar gardens, said McLoughlin.

#### Activism vs. economics

For cities making the plunge into renewables, the economics have often been at the center of the argument. Plummeting costs for wind and solar energy make it about the cheapest way to keep the lights on at City Hall. Some of the solar farms and wind stations also generate lease payments and property taxes that, in places like Jackson County, in the wind-rich region of southwest Minnesota, contribute a substantial amount to local government's bottom line.

But on top of the talk of dollars and cents are creative campaigns by environmentalists who want to push their cities to move faster.

One of the most successful projects has been led by kids like Olya Wright, 12. Last year, Wright, along with other members of a nature group she started, delivered bad news to her City Council in Grand Marais. Using a questionnaire and directions she took from the youth environmental group iMatter, based in St. Louis Park, Wright told the City Council that she had assessed its environmental efforts and determined that they were nearly failing.

"They got a grade," Wright said recently from her home in Grand Marais. "It was a D-plus."

The council passed a climate resolution that night, vowing to shrink the city's carbon footprint.

mckinney@startribune.com 612-217-1747

**REQUEST FOR CITY COUNCIL ACTION**

**Meeting Date:** August 8, 2016  
**Item Name:** US Solar Agreement  
**Originating Department:** Administration  
**Presented by:** Luayn Ruch-Hammond

**Previous Council Action (if any):**  
**Item Type (X only one):**    Consent        Regular Session        Discussion Session   

**RECOMMENDATIONS/COUNCIL ACTION/MOTION REQUESTED** *(Include motion in proper format.)*

**EXPLANATION OF AGENDA ITEM** *(Include a description of background, benefits, and recommendations.)*

US Solar has provided the attached agreement for Council consideration. Staff had emailed them because many of the exhibits are not provided. His response is on the email of August 3 at 4:23 PM. They did provide an updated savings tabled which is at the top of the page with the emails. Council will need to give direction to US Solar on whether they want to enter into an agreement then a fully executable agreement will be brought to the City Council.

<p><b>FINANCIAL IMPLICATIONS:</b></p> <p>Funding Sources &amp; Uses: _____</p> <p>Budget Information:</p> <p style="padding-left: 20px;">Budgeted _____</p> <p style="padding-left: 20px;">Non Budgeted _____</p> <p style="padding-left: 20px;">Amendment Required _____</p>	<p><b>ADVISORY BOARD RECOMMENDATIONS:</b></p> <p>Other _____</p>
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<p><b>Approved</b> _____</p> <p><b>Resolution No.</b> _____</p>	<p><b>Denied</b> _____</p>	<p><b>Tabled</b> _____</p> <p><b>Ordinance No.</b> _____</p>	<p><b>Other</b> _____</p>
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**Luayn Ruch-Hammond**

**From:** David Watts [david.watts@us-solar.com]  
**Sent:** Wednesday, August 03, 2016 4:46 PM  
**To:** cityadmin@frontiernet.net  
**Cc:** gthomasci.mayer@frontier.com; tmcpadden.ci.mayer@frontier.com; bosborn0101@gmail.com; erickboder@gmail.com; nmcneilly.ci.mayer@frontier.com  
**Subject:** RE: Sunscription Agreement with US Solar

Forgive me – this is the updated expected savings table, which should save the City even more than the initial offer:

	0	1	2	3	4	5
Subscribed Energy		560,772	557,968	555,178	552,402	54
Enhanced Bill Credit from Xcel	\$ 0.1174	\$ 0.1198	\$ 0.1223	\$ 0.1249	\$ 0.1275	\$ 0
Subscription Rate to US Solar		\$ (0.1179)	\$ (0.1179)	\$ (0.1179)	\$ (0.1179)	\$ (0
Net Value per kWh		\$ 0.0019	\$ 0.0044	\$ 0.0070	\$ 0.0096	\$ 0
Net Value		\$ 1,085	\$ 2,472	\$ 3,880	\$ 5,309	\$

*Assumes 2.5% escalation in Applicable Retail Rate, 0.5% degradation in subscribed energy*

Thank you,  
 David

**From:** David Watts [mailto:david.watts@us-solar.com]  
**Sent:** Wednesday, August 03, 2016 4:23 PM  
**To:** cityadmin@frontiernet.net  
**Cc:** gthomasci.mayer@frontier.com; tmcpadden.ci.mayer@frontier.com; bosborn0101@gmail.com; erickboder@gmail.com; nmcneilly.ci.mayer@frontier.com  
**Subject:** RE: Sunscription Agreement with US Solar

Luayn,

It seems there may be some confusion, because not every Exhibit is complete. If the City gives us the thumbs up, we will provide an executable, completed version of this Sunscription Agreement.

It is worth noting that the document does include our price, however. We were able to set the price lower than we originally proposed, at **\$0.1179/kWh with no escalator whatsoever**, which is the same offer that the Metropolitan Council has signed with us. Further, the estimated annual subscription size would be 560,772 kWh. I pasted the updated expected savings table below, which accounts for your subscription size.

	Year 0	1	2	3	4	5	10	15	20	25	TO
Subscribed Energy		560,772.00	557,968.14	555,178.30	552,402.41	549,640.40	536,036.11	522,768.55	509,829.38	497,210.46	1:
Enhanced Bill Credit from Xcel	\$ 0.1174	\$ 0.1198	\$ 0.1223	\$ 0.1249	\$ 0.1275	\$ 0.1302	\$ 0.1447	\$ 0.1511	\$ 0.1796	\$ 0.2006	
Subscription Rate to US Solar	\$(0.1170)	\$(0.1180)	\$(0.1190)	\$(0.1190)	\$(0.1190)	\$(0.1190)	\$(0.1190)	\$(0.1190)	\$(0.1190)	\$(0.1190)	
Net Value per kWh	\$ 0.0004	\$ 0.0018	\$ 0.0033	\$ 0.0059	\$ 0.0085	\$ 0.0112	\$ 0.0257	\$ 0.0421	\$ 0.0606	\$ 0.0816	
Net Value		\$ 1,029.02	\$ 1,858.52	\$ 3,269.53	\$ 4,701.70	\$ 6,155.51	\$ 13,765.53	\$ 21,989.86	\$ 30,896.29	\$ 40,559.52	\$

*Assumes 2.5% escalation in Applicable Retail Rate, 0.5% annual degradation in subscribed energy*

Thank you for your time,  
 David

**From:** David Watts [mailto:david.watts@us-solar.com]  
**Sent:** Wednesday, August 03, 2016 1:33 PM  
**To:** cityadmin@frontiernet.net

**Cc:** Reed Richerson; [gthomas.ci.mayer@frontier.com](mailto:gthomas.ci.mayer@frontier.com); [tmcpadden.ci.mayer@frontier.com](mailto:tmcpadden.ci.mayer@frontier.com); [bosborn0101@gmail.com](mailto:bosborn0101@gmail.com); [erickboder@gmail.com](mailto:erickboder@gmail.com); [nmcneilly.ci.mayer@frontier.com](mailto:nmcneilly.ci.mayer@frontier.com)

**Subject:** Sunscription Agreement with US Solar

Luayn,

Thank you again for taking the time to listen to our presentation at the City Council meeting last week. I think the conversation was great, mostly due to the thoughtful questions raised by the Council Members.

I am excited to present the attached Sunscription Agreement, which would allow the City of Mayer to enjoy significant savings on its Xcel Energy bill for no upfront cost.

Please reach out with any additional questions or to set up a meeting with our team.

Thank you for your time and consideration,  
David

**David Watts – Project Developer**

United States Solar Corporation  
100 N 6th St, Suite 222C  
Minneapolis, MN 55403  
w: 612.294.6978 c: 612.859.7575  
[david.watts@us-solar.com](mailto:david.watts@us-solar.com)  
[us-solar.com](http://us-solar.com)



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### US Solar Flat Rate Sunscription<sup>SM</sup> Agreement

This Flat Rate Sunscription<sup>SM</sup> Agreement (this “**Agreement**”) is entered into by and between United States Solar Corporation (together with its successors and assignees, “US Solar” or “we”) and the Subscriber described below (together with any permitted transferees, “Project Subscriber” or “you”) (each a “**Party**” and collectively the “**Parties**”) and is effective as of the date signed by the Parties (the “**Effective Date**”).

<b>Project Subscriber:</b>		<b>US Solar<sup>SM</sup>:</b>	
<b>Name and Address</b>	City of Mayer 413 Bluejay Ave N Mayer, MN 55360 Attention: Luayn Ruch-Hammond	<b>Name and Address</b>	United States Solar Corporation 100 N 6 <sup>th</sup> Street, Suite 222C Minneapolis, MN 55403 Attention: MN CSG Notices
<b>Phone</b>	(952) 657-1502	<b>Phone</b>	(612) 294-6978
<b>E-mail</b>	<a href="mailto:Cityadmin@frontiernet.net">Cityadmin@frontiernet.net</a>	<b>E-mail</b>	<a href="mailto:info@us-solar.com">info@us-solar.com</a>
<b>Premises and Account Numbers</b>			
<b>Community Solar Garden Allocation</b>	An amount expected to produce up to 100% of Project Subscriber's average annual historic electricity usage (net of any other distributed generation resources serving a relevant Premises) over the prior twenty four (24) months with respect to its eligible Account and Premises numbers, which is equal to approximately 560,772 kWh, allocated to multiple Projects (based on the annual estimated generation of the relevant Projects).		

This Agreement sets forth the terms and conditions of your subscription to the Community Solar Garden(s) described in **Exhibit B** (individually and collectively, as context requires, a “**Project**”) and installed at the Community Solar Garden Site(s) described in **Exhibit B** (individually and collectively, as context requires, a “**Project Site**”). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Standard Contract for Solar Rewards Community contract (“**SRC Contract**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit A** Definitions
- Exhibit B** Project(s) and Project Site(s)
- Exhibit C** Bill Credit Types, Current Bill Credit Rates, and Current Sunscription<sup>SM</sup> Rates
- Exhibit D** Estimate of Subscribed Energy
- Exhibit E** [Reserved]
- Exhibit F** Form of SRC Contract
- Exhibit G** Form of Agency Agreement
- Exhibit H** Project Subscriber Data

## ARTICLE 1 SUBSCRIPTION

1.1 Subscribing to Project Capacity. You are subscribing to the Community Solar Garden Allocation ("**CSG Allocation**") identified for each Project on the front page of this Agreement on the terms and conditions set forth herein.

1.2 Bill Credit Value. As more fully detailed in the SRC Contract, your CSG Allocation entitles you to receive a Bill Credit against your monthly retail electrical bill equal to the product of (i) the amount of your Subscribed Energy for each Production Month, and (ii) your applicable Bill Credit Rate. Bill Credits are the dollar amounts paid by NSP to you as a credit on your retail electric bill to compensate you for your beneficial share of the solar electricity produced by the Project and delivered to NSP from the Project.

1.3 Bill Credit Rate. Bill Credit Rates are found in the CSG Tariff. The Bill Credit Rates in effect as of the Effective Date are as follows:

Customer Class	Bill Credit Type	Bill Credit Rate per kWh (AC) for Energy Delivered to Company
Small General Service	Standard	\$0.12229
	Enhanced -- Solar Gardens > 250kW (AC)	\$0.14229
General Service	Standard	\$0.09740
	Enhanced -- Solar Gardens > 250kW (AC)	\$0.11740

Your Bill Credit Rate will be updated annually (or otherwise as provided by order of the MPUC) during the Term only to reflect any updates in the applicable retail rate (labeled the "Standard" rate in the chart above) with respect to your customer class, as reflected in the CSG Tariff. The amount of the CSG "Enhanced" rate premium over the Standard rate reflects the value of the Project's RECs sold and delivered by us to NSP. Per the CSG Tariff, the amount of CSG "Enhanced" rate premium over the Standard rate will not change over the Term. Please see Exhibit C for your account by account Bill Credit Type, current Bill Credit Rates, and current Sunscrition<sup>SM</sup> Rates.

1.4 Subscribed Energy. The estimated amount of Subscribed Energy produced by your CSG Allocation over the Term is set forth in Exhibit D.

1.5 Sunscrition<sup>SM</sup> Rate and Payments.

(a) Your Sunscrition<sup>SM</sup> Rate for each Project for each Production Month shall be equal to \$0.1179/kWh for each of your General Service accounts. Please see Exhibit C for additional details about Bill Credit types, current Bill Credit Rates, and current Sunscrition<sup>SM</sup> Rates.

(b) The monthly payment amount you owe to US Solar (each, a "**Sunscrition<sup>SM</sup> Payment**") is equal to the product of (i) your Subscribed Energy produced in a given Production Month, and (ii) your Sunscrition<sup>SM</sup> Rate.

(c) Sunscrition<sup>SM</sup> Payments will be invoiced monthly, beginning the first month after the Date of Commercial Operation ("**COD**") of each particular Project, and you agree to

make the full monthly Sunscription<sup>SM</sup> Payment within twenty (20) days of receiving our invoice.

1.6 No Additional Funds. The Sunscription<sup>SM</sup> Payments represent full payment by you for your CSG Allocation subscription, and we shall not have any right to compel you to advance or pay any additional funds for the construction or maintenance of the Project or your CSG Allocation.

1.7 Ownership Limitation. Project Subscriber is not purchasing, and US Solar is not selling or transferring to Project Subscriber:

- (a) Any ownership or lien in any specific modules or tangible component of the Project;
- (b) Any ownership or membership interests or rights in US Solar or any entity which owns or may subsequently own the Project (for each Project, a “**Project Owner**”) or any financial rights or distributions associated with such ownership;
- (c) Any right to any payment by NSP to US Solar or the Project Owner with respect to Unsubscribed Energy;
- (d) Any right to manage, direct, control or operate the Project, US Solar or Project Owner; or
- (e) Any RECs produced by the Project or any payment by NSP to US Solar or Project Owner with respect to the RECs.

1.8 Term. The term of the Agreement (“**Term**”) shall begin on the Effective Date and shall end, with respect to each Project, twenty five years after the COD of such Project unless otherwise provided for in this Agreement or to allow for any extension provided under the related SRC Contract.

## ARTICLE 2 STANDARD CONTRACT FOR SOLAR REWARDS COMMUNITY

2.1 SRC Contract. With respect to each Project, US Solar or the applicable Project Owner will enter into the SRC Contract once offered by NSP. Please see Exhibit F for the form of SRC Contract. Among other things, the SRC Contract provides for the following:

- (a) US Solar acting as the Community Solar Garden Operator;
- (b) Sale and delivery to NSP of all electricity and RECs generated by the Project for a term of twenty five (25) years;
- (c) Allocation to Subscribers by NSP of Bill Credits in exchange for delivery by US Solar, or the applicable Project Owner, of the electricity and RECs generated by the Project; and
- (d) US Solar ensuring compliance with the Community Solar Garden Statutory Requirements (“**Eligibility Requirements**”), which include eligibility requirements relating to both the Project and Subscribers.

2.2 Subscriber Agency Agreement and Consent Form. Attached to the SRC Contract is a Subscriber Agency Agreement and Consent Form (“**Agency Agreement**”) that you will be required to sign. Please see Exhibit G for the form of Agency Agreement. Among

other things, the Agency Agreement provides for the assignment of energy and RECs to NSP and provides information regarding the following:

- (a) Data access, control, and disclosure;
- (b) Contacting NSP about certain questions regarding your Bill Credits; and
- (c) Contacting US Solar about questions regarding this Agreement, NSP's data policies, and Project-related items.

### **ARTICLE 3 ELIGIBILITY AND EXCESS BILL CREDIT PURCHASE**

3.1 Eligibility Data. You acknowledge that the account data contained in Exhibit H is complete and accurate and that US Solar may use the data for purposes of confirming your conformance with the applicable Eligibility Requirements. You agree to provide US Solar and the applicable Project Owner with any additional information we request to determine, verify, or confirm your eligibility at any time during the Term.

3.2 Authorization to Access Data. You authorize US Solar and the applicable Project Owner to use all eligibility data set forth in Exhibit H, as well as your electric bills for each Eligible Address for the most recent twenty-four (24) months, to assist US Solar and the applicable Project Owner in confirming your eligibility.

3.3 Credit Information. Subject to the confidentiality and privacy provisions of Section 8.1, you agree to provide US Solar with information reasonably necessary for US Solar, the Project Owner, or its Financing Parties to confirm your creditworthiness.

3.4 Excess Bill Credit Purchase. As per the SRC Contract, any excess Bill Credits (i.e., Bill Credits in a billing period that exceed the amount you owe NSP for your regular retail service in that period) will be carried forward and credited against all charges for at least a twelve (12) month cycle. Under the SRC Contract, NSP will be required to purchase from you all such Bill Credits with the billing statement that includes the last day of February and restart the credit cycle the following period with a zero credit balance.

### **ARTICLE 4 US SOLAR RESPONSIBILITIES**

4.1 Design and Implementation. We agree to develop, design, finance and construct the Project(s), including, but not limited to, site acquisition, the filing of interconnection applications and procurement of an interconnection agreement with NSP, the selection and procurement of Project components, and the installation and testing of all Project components.

4.2 Application Process. We shall submit each Project to NSP for approval as a Community Solar Garden ("**CSG**") in accordance with the CSG Tariff and shall provide all information required by NSP to determine the completeness of our application and technical viability of each Project. Once offered by NSP, we (or the applicable Project Owner) shall enter into the SRC Contract, interconnection agreement, and other agreements with NSP that may be necessary to qualify each Project as a CSG and for the Project to operate and deliver energy to NSP.

4.3 Timeliness. In keeping with the time requirements set forth in the SRC Contract, we shall use commercially reasonable efforts to finish construction and installation of each particular Project within twenty four (24) months after NSP has deemed complete our CSG application with respect to such Project.

4.4 Eligibility Compliance. US Solar is responsible for confirming compliance with the Eligibility Requirements, including verification of the eligibility information you have provided to US Solar.

4.5 Maintenance. We will maintain the Project in a prudent manner and in accordance with industry standards throughout the Term. We will provide you with notice of any material repair or replacement event that is reasonably anticipated to exceed one hundred eighty (180) days.

## ARTICLE 5 FURTHER INFORMATION

5.1 Unsubscribed Energy. Unsubscribed Energy will be purchased by NSP from the Project in accordance with the SRC Contract and Applicable Laws.

5.2 Reserves. US Solar will establish reserve funds available for use to maintain the Project and pay Project operating expenses such as taxes, maintenance, insurance, and management services for the Term.

5.3 Other Agreements and Documents.

(a) Upon your request we will provide the following when and as available:

- i. Copy of the SRC Contract between NSP and the Project Owner;
- ii. Copy of the solar module warranty;
- iii. Certificate(s) of insurance; and
- iv. Long-term maintenance plan.

(b) We will provide you with any other information that you may request, or that we may be required to deliver, under the CSG Tariff.

(c) You agree to sign an acknowledgment of receipt of any such materials.

5.4 Information Sharing. The Parties acknowledge the Agency Agreement contains certain provisions relating to "Subscriber Account Information" and "Subscriber's Energy Use Data" and agree to adhere to those provisions.

5.5 Fair Disclosure. You acknowledge that, prior to entering into this Agreement and becoming a Subscriber, we fairly disclosed to you the future potential costs and benefits of your Subscription and provided you with a copy of the SRC Contract. US Solar will comply with all other requirements of the MPUC and CSG Tariff with respect to communications with you.

5.6 Taxes. You recognize that neither we nor NSP makes any representations or warranties concerning the taxable consequences, if any, to you with respect to your Bill Credits, your Sunscription<sup>SM</sup> Payments, or your participation in the Project. We are responsible for

paying the Minnesota Solar Energy Production Tax, if any, as in effect as of the Effective Date under Minnesota Statutes 272.0295. You are responsible to either pay or reimburse us for any and all other Taxes assessed on the generation, sale, delivery, or consumption of your Subscribed Energy or your Bill Credits.

5.7 Securities Laws. Neither we nor NSP makes any representations or warranties concerning the implication of any federal or state securities laws with respect to this Agreement or your CSG Allocation. Neither this Agreement nor your CSG Allocation has been registered under the Securities Act of 1933, as amended, or any state securities laws. US Solar does not believe this Agreement or the CSG Allocation constitute a security governed by such laws but, in the event any such securities laws may apply, Project Subscriber represents that, as of the Effective Date, it is an "accredited investor" as that term is defined in Rule 501 of the Securities and Exchange Commission under the Securities Act of 1933, as amended. Project Subscriber agrees that it is not entering into this Agreement or acquiring the Bill Credits for the purpose of making a market in such interests or trading them on any securities market or equivalent thereof which might fall within the scope of such laws. You are urged to seek your own professional advice on these matters.

## ARTICLE 6 TRANSFERABILITY

6.1 General. This Agreement and your Bill Credits are your personal property. Your ability to continue to receive Bill Credits is dependent upon your continuing compliance with the applicable Eligibility Requirements and your payment of the Sunsubscription<sup>SM</sup> Payments. This Agreement and the Bill Credits are transferable only as set forth below. This Agreement and the Bill Credits are not transferable by you, whether voluntarily or by operation of law, at any time when you are in default under this Agreement, unless as approved by US Solar.

6.2 Sale or Transfer to Other Eligible Subscribers. You may voluntarily sell or transfer this Agreement, or any portion of your CSG Allocation (but not less than the minimum set by Eligibility Requirements), for any reason (but not more than once in any twelve (12) month period) and to any person or entity who, at the time of the sale or transfer meets applicable Eligibility Requirements for the relevant Project(s). Any amounts you collect from a transferee in respect of your transfer of this Agreement, or any portion of your CSG Allocation, belongs to you. Neither US Solar nor a Project Owner will have any claim or right to any such amounts you may receive.

Your sale or transfer of your CSG Allocation for any Project is expressly conditioned upon:

- (a) US Solar receiving at least ninety (90) days' prior written notice identifying the prospective purchaser or transferee, providing the physical address at which it takes electric service from NSP, the NSP account number and all other information needed to determine its eligibility to be a Subscriber, as well as any other subscriptions in the relevant Project or other CSGs held by the proposed transferee, and any solar facility owned or leased by the proposed transferee at the address associated with the proposed transfer;

- (b) Receipt by US Solar of authorizations from the proposed transferee needed to access their NSP account data, and receipt by US Solar of usage data at the proposed transferee's address needed to calculate its historic electrical usage;
- (c) Determination by US Solar that the proposed transferee is eligible to be a Subscriber in the relevant Project and that its participation as a Subscriber will not cause the Project to fail any Eligibility Requirement or otherwise fail to comply with any Applicable Laws or contractual obligations to NSP;
- (d) The proposed transferee's (i) express written assumption of this Agreement or execution and delivery of a new subscription agreement with US Solar as to the CSG Allocation on terms acceptable to US Solar, including the cure of any prior defaults arising under this Agreement; and (ii) execution of an Agency Agreement or any other document reasonably required by US Solar or NSP to effectuate the transfer and maintain compliance with the Eligibility Requirements;
- (e) The proposed transferee meeting our credit requirements; and
- (f) US Solar receiving any applicable Cover Cost Amount from Project Subscriber.

US Solar shall notify NSP of any such transfer so that NSP may change the applicable Subscriber benefits to apply to the transferee's retail NSP electric account.

### 6.3 Relocation/Sale of Eligible Address.

- (a) If during the Term you move from an Eligible Address and are no longer the NSP account-holder at that address, you may transfer all or part of your CSG Allocation to another Eligible Address of yours (new or existing) conditioned on the following:
  - i. You provide us with at least ninety (90) days' notice of such transfer; and
  - ii. We determine that the new address, including the prior electrical usage at that address, will allow for the transferred CSG Allocation to continue to meet the applicable Eligibility Requirements.
- (b) If during the Term you move from or sell an Eligible Address and are no longer the NSP account-holder at that address, and you are not relocating to a new Eligible Address or do not have sufficient subscription capacity at another Eligible Address, before moving you must either:
  - i. Sell or transfer the relevant portion of your CSG Allocation in accordance with Section 6.2. If requested by you, we will use commercially reasonable efforts for up to one hundred eighty (180) days to assist you in this process; or
  - ii. Cancel the relevant portion of your CSG Allocation pursuant to Section 10.1 (a)(iii) below.
- (c) You are obligated to maintain compliance with the applicable Eligibility Requirements and to notify us if you plan to be out of compliance. You

acknowledge that your failure to maintain compliance with the applicable Eligibility Requirements may result in NSP not paying you Bill Credits and our cancellation of the relevant CSG Allocation.

- (d) This Agreement confers to us no right to interfere with, or require our consent to, your sale or transfer of your real property.

**ARTICLE 7  
FINANCING**

7.1 Consent. We may, without your prior consent, in whole or in part, (i) assign, mortgage, pledge or otherwise collaterally assign our interests in this Agreement and the Project to any Financing Party, (ii) directly or indirectly assign this Agreement and the Project to a Project Owner or an affiliate or subsidiary of ours, (iii) assign this Agreement and the Project to any entity through which we are obtaining financing or capital for the Project; and (iv) assign this Agreement and the Project to any person succeeding to all or substantially all of our assets. In the event of any such assignment (other than a collateral assignment), we shall be released from all our liabilities and other obligations under this Agreement (only upon assumption of our obligations hereunder by the assignee). However, any assignment of our rights and/or obligations under this Agreement shall not result in any change to your rights and obligations under this Agreement. A Financing Party may assign its interest at any time, and without your consent, to another person or another Financing Party. If the Financing Party or its successor becomes the owner of our interest by foreclosure or otherwise, it may sell or transfer that interest to any third party without your consent.

7.2 Changes. You acknowledge that we may obtain construction and long-term financing from one or more Financing Parties. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with any assignment by us (or the Financing Parties, as described below), you agree to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties. If this Agreement applies to more than one Project, you also agree to execute a separate Agreement for each Project if requested by us in connection with such assignment.

7.3 Notice and Opportunity to Cure. You may not terminate or suspend your performance due to our Event of Default unless you have given the Financing Parties prior written notice of your intent to so terminate or suspend this Agreement. In your notice you will describe the circumstances giving rise to our default, and provide the Financing Parties with the opportunity to cure the default within thirty (30) days after receipt of such notice or any longer period provided for in this Agreement. If our default reasonably cannot be cured by the Financing Parties within the period provided and the Financing Parties commence and pursue to cure of such default within that period, the period for cure will be extended for a reasonable period of time under the circumstances, but not to exceed an additional sixty (60) days. The Parties' respective obligations under this Agreement will otherwise remain in effect during the cure period. If the Financing Parties or an assignee (including any buyer or transferee) acquires title to or control of our assets and within the applicable time periods cures all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement and which are capable of cure by a third party or entity, then such Financing Parties

or third party transferee will no longer be in default under this Agreement, and this Agreement will continue in full force and effect.

## ARTICLE 8 PRIVACY; CONFIDENTIALITY; PUBLICITY

8.1 Subscriber Data. Other than in accordance with the Agency Agreement, US Solar will not disclose Project Subscriber's Account Information, Subscriber Energy Usage Data, Bill Credits or any other personal information of Project Subscriber to any person except (i) to NSP, to the extent required by Applicable Laws or the SRC Contract, for the purpose of administration of the Project, Project CSG eligibility, and Project Subscriber CSG eligibility; (ii) to attorneys, accountants, advisors, and agents of US Solar to the extent necessary for them to render advice or perform professional services associated with the Project or this Agreement; (iii) as otherwise required by Applicable Laws.

8.2 Publicity. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement or related to Project Subscriber's participation in a Project, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Notwithstanding the foregoing, the Parties agree to the use each other's logos in their respective marketing materials.

## ARTICLE 9 DISPUTE RESOLUTION

### 9.1 NSP Disputes.

- (a) Any dispute or question which you have with respect to the application by NSP of the Bill Credits to your retail electric bill, in particular the applicable Bill Credit Rate that NSP used to determine the amount of your Bill Credits, shall be directed by you to NSP for resolution. You may request that US Solar assist you in this respect. You acknowledge that your obligation to make your Sunscription<sup>SM</sup> Payments is independent of the amount of your Bill Credits.
- (b) All disputes arising with respect to the contract between NSP and US Solar shall be resolved by negotiation and, in the absence of a resolution, by the Minnesota Public Utilities Commission ("MPUC"), as per the SRC Contract. Any issue or dispute identified by you with respect to NSP's actions with respect to the Project or the Bill Credits other than as described in Section 9.1(a) shall be referred to US Solar. If the dispute or question is not resolved to the Project Subscriber's satisfaction, you have the right to refer the issue directly to the MPUC at the following address:

Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101  
Tel: (651) 296-7124  
Toll free: (800) 657-3782  
Fax: (651) 297-7073  
consumer.puc@state.mn.us

9.2 Disputes between Parties.

- (a) Any dispute or issue a Party may have arising from or related to this Agreement, which are not resolved by communications between Project Subscriber and US Solar representatives in person, over the phone, or electronically shall be submitted to the other Party in writing. Each Party shall assign an officer or senior management executive to address or negotiate a resolution with the other Party. The Parties agree to attempt to reach a resolution of such dispute within ten (10) days or such longer period as the Parties may agree.
- (b) We shall perform any calculation called for hereunder and do so in a commercially reasonable manner and in accordance with industry accepted standards. Any dispute regarding the results of any such calculation shall be resolved by having an independent consultant having nationally recognized credentials, such as Navigant Consulting, Inc. or Leidos, Inc., perform the calculation at the disputing party's expense. Such consultant's results shall be binding on the Parties absent manifest error.
- (c) Any dispute arising from or relating to this Agreement not resolved by the Parties under Section 9.2(a)-(b) above shall be arbitrated in Minneapolis, MN. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration.

**ARTICLE 10**

**CANCELLATION EVENTS; EVENTS OF DEFAULT; REMEDIES**

10.1 Cancellation Events.

- (a) You may cancel all or part of your CSG Allocation relating to a particular Project to the extent that:
  - i. Construction of that Project is not completed within twenty-four (24) months of our receipt of NSP determining that Project's CSG application is complete, as extended by Force Majeure, and additional Project capacity does not exist;
  - ii. That Project becomes ineligible, in whole or in part, as a CSG during the Term and the related SRC Contract is terminated, and additional Project capacity does not exist; or

- iii. You become aware that, due to relocation or other material changes, your CSG Allocation will no longer satisfy the applicable Eligibility Requirements and you elect not to sell or transfer, or cannot sell or transfer, your CSG Allocation to another eligible NSP customer.
- (b) We may cancel all or part of your CSG Allocation relating to a particular Project to the extent that:
  - i. You fail to meet the applicable Eligibility Requirements at any time during the Term;
  - ii. Your CSG Allocation is transferred by operation of law as defined in Section 10.7 to an ineligible person or entity and is not sold to an eligible transferee within the time provided;
  - iii. Prior to the start of Project construction, we are not able to confirm your creditworthiness; or
  - iv. Prior to the start of Project construction, we determine to terminate the development of Project(s) for which your CSG Allocation relates, and additional Project capacity does not exist.
- (c) Cancellation will be effective upon written notice by the cancelling Party to the other Party, including a description of the circumstances giving rise to the Cancellation Event and the specific portion of CSG Allocation canceled.

10.2 Events of Default. Each of the following events shall be an Event of Default under this Agreement:

- (a) A Party breaches any material representation or warranty or fails to perform a material obligation set forth in this Agreement and does not cure such breach or failure within thirty (30) days of written notice of the breach from the non-defaulting Party.
- (b) With respect to Project Subscriber, failure to make any Sunscription<sup>SM</sup> Payment when due, and failure to cure the default within ten (10) days after written notice of such failure from US Solar.

10.3 Cancellation Remedies.

- (a) In the case of a cancellation pursuant to Sections 10.1(a)(i) or (ii) or 10.1(b)(iii) or (iv), you will owe nothing with respect to the amount of CSG Allocation cancelled.
- (b) In the case of a cancellation pursuant to Sections 10.1(a)(iii) or 10.1(b)(i) or (ii) (each, a "**Covered Cancellation Event**"), you will be responsible for paying the Cover Cost Amount, if any, with respect to the amount of CSG Allocation cancelled, subject to the following:
  - i. We will use commercially reasonable efforts for up to one hundred eighty (180) days after such cancellation ("**Cancellation Replacement Period**") to secure one or more Eligible Transferee who will subscribe to the entire

- cancelled portion of your CSG Allocation at no less than your Subscription<sup>SM</sup> Rate. If we are successful, your Cover Cost Amount will be zero.
- ii. To the extent during the Cancellation Replacement Period we are unsuccessful in securing one or more Eligible Transferees who will subscribe to the entire cancelled portion of your CSG Allocation, the Unsubscribed Energy rate provided for in the CSG Tariff will be used in lieu of a transferee Subscription<sup>SM</sup> Rate for purposes of determining the Cover Cost Amount.
- (c) During the Cancellation Replacement Period and before paying any Cover Cost Amount or other cancellation related amounts, you will be responsible for making Subscription<sup>SM</sup> Payments that will be deemed to equal the full amount of your Subscription<sup>SM</sup> Payments had no cancellation occurred.
  - (d) At the end of the Cancellation Replacement Period, we will determine the Cover Cost Amount and other amounts owing by you and provide you written notice of same. These amounts will become due and payable by you within ten (10) days of your receipt of this notice.
  - (e) After paying the Cover Cost Amount, your remaining Subscription<sup>SM</sup> Payments will reflect your appropriately reduced CSG Allocation.
  - (f) You will be responsible for reimbursing us for any costs we reasonably incur in identifying an Eligible Transferee who will subscribe to the cancelled portion of your CSG Allocation and in the execution of related documentation.
  - (g) Upon cancellation of the entire CSG Allocation, we may terminate this Agreement in its entirety.

10.4 Default Remedies. In the event a defaulting Party fails to cure an Event of Default within the applicable cure period, the non-defaulting Party may:

- (a) With respect to an Event of Default by Project Subscriber:
  - i. We may terminate this Agreement immediately by notifying you in writing.
  - ii. We may direct NSP to remove you as a subscriber with respect to the Project, and you will no longer receive Bill Credits associated with the CSG Allocation.
  - iii. You will owe the Cover Cost Amount, if any.
    - 1. We will use commercially reasonable efforts for sixty (60) days after your Event of Default (“**Default Replacement Period**”) to secure one or more Eligible Transferee who will subscribe to your entire CSG Allocation at no less than your Subscription<sup>SM</sup> Rate. If we are successful, your Cover Cost Amount will be zero.
    - 2. To the extent during the Default Replacement Period we are unsuccessful in securing one or more Eligible Transferee who will subscribe to your entire CSG Allocation, the Unsubscribed Energy rate provided for in the CSG Tariff will be used in lieu of a transferee

Sunscription<sup>SM</sup> Rate for purposes of determining the Cover Cost Amount.

- iv. You will owe an amount equal to the Sunscription<sup>SM</sup> Payments that would have been payable by you during the Default Replacement Period absent the Event of Default.
- v. At the end of the Default Replacement Period, we will determine the Cover Cost Amount and other default-related amounts owing by you and provide you with written notice of same. These amounts will become due and payable immediately by you upon your receipt of this notice.
- vi. You will be responsible for reimbursing us for any costs we reasonably incurred in attempting to identify an Eligible Transferee and in the execution of related documentation.
- vii. Upon termination of this Agreement, we shall have no further obligations to you hereunder.

(b) With respect to an Event of Default by US Solar:

- i. Prior to the COD of the final Project, you may terminate this Agreement at any time by notifying us in writing.
- ii. After the COD of the final Project, you may terminate this Agreement only if our default results in your CSG Allocation not producing any Subscribed Energy for one hundred eighty (180) consecutive days or more.
- iii. Upon termination, you shall have no further obligation to us except for obligations arising or accruing prior to termination.

10.5 No Consequential Damages. No Party shall be liable to the other Party for any indirect, special, punitive, exemplary, incidental, or consequential damages, whether arising in contract, tort, under statute, or in equity, and each Party waives its rights to any such damages. In no event will the Cover Cost Amount constitute, or be deemed to constitute, indirect, special, punitive, exemplary, incidental, or consequential damages.

10.6 No Warranty; Exclusive Remedies. NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be the Parties' sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

10.7 Involuntary Transfers. Upon transfer of title or control of the Eligible Address or your CSG Allocation, or portion thereof, due to bankruptcy, foreclosure or operation of law for other reasons, you or the transferee must notify US Solar immediately. During any period of time in which a trustee, receiver, or creditor is in possession of the Eligible Address and assumes responsibility as the account-holder with NSP at the Eligible Address, such transferee shall be deemed to have succeeded to your rights and obligations under this Agreement at the Eligible Address during the period of its possession. Upon the transfer of title to the property at the Eligible Address and the CSG Allocation to a creditor or other third party, the transferee shall notify US Solar of the transfer. If the transferee(s) meet all relevant Eligibility Criteria, the transfer shall be treated as a sale or transfer of the CSG Allocation to such transferees upon

completion of the conditions set forth in Section 6.2. If the transferee does not meet the transfer conditions, then the transferee(s) shall be required immediately to sell or transfer the CSG Allocation or applicable portion to an eligible buyer in accordance with Section 6.2.

## ARTICLE 11 MISCELLANEOUS

11.1 Notices. Notices, or other documents required or permitted by this Agreement must be given by personal delivery, reputable overnight courier, email, or U.S. certified mail postage prepaid and shall be sent to the respective parties at the address listed on the first page of this Agreement. Notice shall be deemed delivered (i) the day of delivery, if delivered by hand during the receiving party's regular business hours or by e-mail before or during the receiving party's regular business hours, (ii) upon the date of actual delivery or refusal shown on the courier's delivery receipt if sent by overnight courier, and (iii) on the fourth business day after deposit in the U.S. mail if sent by certified mail. Any party may change the address for notice by notice to the other party.

11.2 No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or liability to, any person not a party to this Agreement. Excepting the rights of Financing Parties and assignees expressly provided for herein, no provision of this Agreement is intended to nor shall it in any way provide any rights to any third party or inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

11.3 Entire Agreement; Amendments. It is mutually understood and agreed that this Agreement, and the Exhibits attached hereto, constitutes the entire agreement between Project Subscriber and US Solar and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representations or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both parties; provided, however, that, US Solar may amend Project and Project Site information and allocate your CSG Allocation among Projects and Project Sites (prior to relevant CODs) without Project Subscriber's prior consent.

11.4 Governing Law. This Agreement is made in Minnesota and shall be governed by the laws of the State of Minnesota.

11.5 SRC Contract and CSG Tariff. This Agreement contains summaries of, and makes reference to, certain provisions of the SRC Contract and CSG Tariff. While we believe these summaries and references to be accurate and fair, any conflict between such summaries and references shall be resolved in favor of the relevant provisions contained in SRC Contract and CSG Tariff. You are urged to review these documents.

11.6 Waiver. Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with

respect to any matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

11.7 Relationship of Parties. The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between the Parties or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. US Solar and Project Subscriber shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

11.8 Severability. Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in full force. The Parties will, however, use commercially reasonable efforts to agree on the replacement of the void, illegal or unenforceable provisions with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and the Agreement as a whole.

11.9 Counterparts. This Agreement may be executed in two or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

(SIGNATURE PAGES TO FOLLOW)

[Project Subscriber]

United States Solar Corporation

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Printed Name: Reed Richerson

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

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

EXHIBIT A

DEFINITIONS

1. **Applicable Laws.** Any law, statute, rule, regulation, ordinance, order (including orders issued by the MPUC), tariff, judgment, or other legally binding restriction or ruling issued by a governmental authority which is applicable to the Project, US Solar, Subscribers, CSGs or this Agreement.
2. **Bill Credit Rate.** A dollar amount per kilowatt-hour reflected in the CSG Tariff with respect to specific classes of NSP customers to be used for determining a Subscriber's Bill Credit.
3. **Cancellation Event.** One or more event described in Section 10.1(a)-(b).
4. **Cover Cost Amount.**
  - (a) With respect to a sale or transfer by you pursuant to Section 6.2, the positive difference, if any, of:
    - i. the net present value (using a discount rate of 4%) of the projected payments by you over the Term post-transfer with respect to the transferred portion of your CSG Allocation, had this Agreement remained unchanged for the remaining Term (plus any other amounts previously accrued and owed by you); minus
    - ii. the net present value (using a discount rate of 4%) of the projected payments to be made by your transferee with respect to the transferred portion of your CSG Allocation over the remaining Term.
  - (b) With respect to a Covered Cancellation Event, the positive difference, if any, of:
    - i. the net present value (using a discount rate of 4%) of the projected payments by you over the Term post-cancellation with respect to the cancelled portion of your CSG Allocation, had this Agreement remained unchanged for the entire Term (plus any other amounts previously accrued and owed by you); minus
    - ii. the net present value (using a discount rate of 4%) of the projected payments to be made by an Eligible Transferee (or, as applicable, by NSP for the Unsubscribed Energy associated with the portion CSG Allocation not transferred) with respect to the cancelled portion of your CSG Allocation over the remaining Term.
  - (c) With respect to an Event of Default by you, the positive difference, if any, of:
    - i. the net present value (using a discount rate of 4%) of the projected payments by you over the Term post-default, had this Agreement remained unchanged with respect to your entire CSG Allocation for the entire Term (plus any other amounts previously accrued and owed by you); minus
    - ii. the net present value (using a discount rate of 4%) of the projected payments to be made by an Eligible Transferee (or, as applicable, by NSP for the Unsubscribed Energy associated with the portion CSG Allocation not transferred) with respect to the entire CSG Allocation over the remaining Term.

5. **CSG Tariff.** The Solar Rewards Community Program tariff of NSP's rate book, as amended or updated and any successor thereto.
6. **Eligible Address.** A Subscriber's NSP service address that meets the Eligibility Requirements.
7. **Eligible Transferee.** A person or entity who meets the applicable Eligibility Requirements and meets the conditions set for in Section 6.2(a)-(e)
8. **Financing Party.** A person or persons providing construction or permanent financing in connection with construction, ownership, operation and maintenance of the Project, or if applicable, any person to whom the ownership interest in the Project has been transferred, subject to a leaseback of the Project from such person.
9. **JAMS.** JAMS, formerly known as Judicial Arbitration and Mediation Services, Inc.
10. **MPUC.** Minnesota Public Utilities Commission.
11. **NSP.** Northern States Power Company, a wholly owned subsidiary of Xcel Energy Inc.
12. **Sunscription<sup>SM</sup> Rate.** A dollar amount per kilowatt-hour with respect to the Subscribed Energy produced by Project Subscriber's CSG Allocation, as set forth in Section 1.5(a), used for determining Project Subscriber's Sunscription<sup>SM</sup> Payments.
13. **Taxes.** Any federal, state, or local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, or transaction tax, other taxes, regulatory fees, surcharges, or other similar charges, but does not include any income taxes imposed on US Solar for payments made by you and received by us under this Agreement.

Any conflict in the meaning of a term used both herein term and in the SRC Contract shall be resolved in favor of the meaning given to such term in the SRC Contract.

EXHIBIT B

PROJECT(S) AND PROJECT SITE(S)

EXHIBIT C

BILL CREDIT TYPES, CURRENT BILL CREDIT RATES, CURRENT SUNSCRIPTION<sup>SM</sup> RATES

Account Number	Premise Number	Account Type	Sunscription <sup>SM</sup> Rate

Bill Credit Value. We make no representation or warranty as to the likelihood that any Bill Credits will create any specific amount of economic benefit at any time or over any period of time or over the Term of this Agreement as a whole, or that the Bill Credits will create a positive economic benefit to you. The estimate of potential benefits contained herein are based on a number of assumptions about estimated Subscribed Energy Bill Credit Rates, Applicable Laws currently in place, NSP's retail electrical rates, and a number of other factors beyond the control of US Solar. Any estimate by US Solar herein or elsewhere given to Project Subscriber as to any expected benefit to Project Subscriber from the Bill Credits at any time or over any period of time is purely an estimate based on the information available to US Solar and related assumptions at the time and is not a guarantee that any positive economic benefit will accrue to Project Subscriber from the Bill Credits or that any specific amount of benefits will accrue to Project Subscriber at any time, or over any period of time, or over the Term of the Agreement.

EXHIBIT DESTIMATE OF SUBSCRIBED ENERGY

Production. US Solar makes no representation or warranty as to the likelihood that the Project will generate any specific amount of electricity or sufficient electricity so as to create any specific or minimum Bill Credits to Project Subscriber during any period of time or over the Term of the Agreement as a whole. The production estimate described herein is based on a number of assumptions about expected solar insolation at the Project Site, and performance of the modules and other Project equipment, the accuracy of production estimating software and other factors affecting possible production which are not within the control of US Solar. Circumstances experienced at the Project will deviate from historical data and other assumptions and projections. The actual production of energy of electricity by the Project and delivery of energy, including Subscribed Energy, by the Project is also subject to lack of sunlight, other adverse weather, equipment failures, curtailments or outages by NSP, Force Majeure events, and other events beyond the control of US Solar. The production estimate and any other estimate communicated by US Solar to Project Subscriber of expected energy production from the Project at any time or over any period of time is purely an estimate based on the information available to US Solar at the time and is not a guarantee that any such production will occur or that any particular amount of Subscribed Energy will be received by Project Subscriber at any time or over any period of time, including the Term of this Agreement.

EXHIBIT E

[RESERVED]



PROPRIETARY AND CONFIDENTIAL DRAFT

EXHIBIT F

FORM OF SRC CONTRACT



PROPRIETARY AND CONFIDENTIAL DRAFT

EXHIBIT G

FORM OF AGENCY AGREEMENT

EXHIBIT H

PROJECT SUBSCRIBER DATA

1. Project Subscriber (name as shown on NSP account) \_\_\_\_\_
2. NSP service address (Eligible Address): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. NSP account number: \_\_\_\_\_
4. Average annual electrical consumption: \_\_\_\_\_ kWh (AAEC)
5. 120% of AAEC: \_\_\_\_\_ kWh

# MELCHERT • HUBERT • SJODIN, PLLP

## MEMORANDUM

DATE: August 31, 2016  
TO: City of Mayer  
FROM: R. Lawrence Harris  
RE: US Solar Agreement

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As I understand it, the City of Mayer (the "City") has been approached by US Solar with a proposal that the City enter into a twenty year agreement whereby the City would subscribe for production of approximately 673,000 kWh per year from a solar garden(s) to be constructed by US Solar. US Solar will then sell the electrical power generated by the solar garden to NSP and NSP will, in accordance with its tariff with the Minnesota Public Utilities Commission ("NPUC") provide a billing credit to the City on its periodic electric utility bill. US Solar will not directly provide electrical power to the City. The City would continue to receive its power from NSP (Xcel).

### COMMENTS

1. Competing Proposal/Contract. There has been a fair amount of activity with solar power producers and promoters seeking agreements with various governmental entities generally along the lines proposed by US Solar to the City. The City does have the authority to enter into such an agreement. Primary issues with a subscription agreement for solar power and the corresponding bill credits are largely contractual and allocation of risk as opposed to legal.

Because there are several solar power providers and promoters, soliciting contracts from cities in the area, my first suggestion is that it would be prudent for the City to seek out and receive a proposal from at least one additional solar power provider. Although the Uniform Municipal Contracting Law (the competitive bidding requirement) of Minn. Stat. § 471.345 is not always a model of clarity, a reasoned decision would likely determine that a contract entered into by a municipality for the subscription of solar energy is not a purchase of "supplies, materials, equipment, or the rental thereof," which would trigger competitive bidding. However, prudent risk management would strongly suggest that the City

obtain at least one other proposal from a solar energy provider before making a decision.

2. Overall Economics. It is important for the City to realize that the City is “under water” in year one of the US Solar Flat Rate Subscription Agreement (the “US Solar Agreement”). The US Solar Agreement provides that the City will pay to US Solar \$0.1179/kWh for each of the City’s general service accounts. The bill rate credit per kWh given by NSP back to the City is \$0.11740/kWh. In other words, the City is paying more to US Solar (at least initially) per kWh than it is receiving in bill credit from NSP. There can be no assurances that the NSP bill credit rate will increase over the life of the US Solar Agreement to generate a spread between the fixed rate the City pays US Solar and the bill credit rate the City receives from NSP. US Solar is relatively direct that no such assurances can be provided. Please note the following language at the bottom of Exhibit C of the US Solar Agreement:

Bill Credit Value. We make no representation or warranty as to the likelihood that any Bill Credits will create any specific amount of economic benefit at any time or over any period of time or over the Term of this Agreement as a whole, or that the Bill Credits will create a positive economic benefit to you. The estimate of potential benefits contained herein are based on a number of assumptions about estimated Subscribed Energy Bill Credit Rates, Applicable Laws currently in place, NSP’s retail electrical rates, and a number of other factors beyond the control of US Solar. Any estimate by US Solar herein or elsewhere given to Project Subscriber (the City) or as to any expected benefit to Project Subscriber (the City) from the Bill Credits at any time or over any period of time is purely an estimate based on the information available to US Solar and related assumptions at the time and is not a guarantee that any positive economic benefit will accrue to Project Subscriber (the City) from the Bill Credits or that any specific amount of benefits will accrue to Project Subscriber (the City) at any time, or over any period of time, or over the Term of this Agreement.

In other words, US Solar makes no representations or warranties that the City will ever receive any positive economic benefit by entering into the US Solar Agreement.

The City is essentially buying a hedge against increased NSP electric utility rates on the assumption that any increase in the NSP utility rates approved by the MPUC will also include an increased bill credit to the City. Although this might be a reasonable assumption, there can be no certainty that this will occur. This is particularly a risk when the initial subscription rate payable by the City to US Solar exceeds the initial amount of the bill credit provided by NSP to the City.

This does not mean that the City cannot enter into an agreement with a solar garden provider such as US Solar, but it must be cognizant of the risk and make a full and fairly informed decision as to the likelihood of both rate increases approved by the MPUC for NSP over the term of the US Solar Agreement and that such rate increases will also include an increase to the bill credit provided by NSP to a customer such as the City which is a subscriber under a solar garden agreement.

3. US Solar Agreement Specific Issues.

a. Sunscription Rate and Payments. Section 1.5(a) states that the City pays the sunscription rate “for each Project for each Production Month for each of (the City’s) General Service accounts.” This causes trouble in a couple of ways:

i. Taken literally, the City could be paying the sunscription rate for each project. It is not uncommon that the subscribed power may come from multiple solar gardens (which each might be a separate “Project”.) I do not see a definition for the term Project in either the US Solar Agreement or the SRC Contract. However, I note that Exhibit B (which is blank) anticipates multiple Projects and Project Sites. Please also note that this phrase requires the City to pay the rate per kWh for each of the City’s General Service accounts. The term General Service is not defined, although I suspect that US Solar intends it to mean the customer class of NSP set forth in Section 1.3 of the US Solar Agreement.

ii. Note that in Section 1.5 (b) the monthly payment owed to US Solar in a given month is determined by multiplying the Subscribed Energy (Subscribed Energy is set forth on Exhibit D which is blank) by the sunscription rate. In other words, assuming the subscription rate is 120% of current electrical usage at the premises listed in the US Solar Agreement, the City will, on day one, be obligated to pay US Solar for an extra 20% of kWh over and above its actual usage. This seems to be inconsistent with the methodology for calculating payments set forth in Section 1.5(a). This is likely not a significant issue as the SRC in Section 1 (A) indicates that NSP will buy (through the use of bill credits) all subscribed energy and that each subscriber will receive a bill credit at the bill credit rate for electricity generated attributable to the Subscriber Subscription. In other words, even if the City subscribes for more solar energy than actual energy used by the City which is provided by NSP, the City,

under the terms of the SRC, will receive bill credits equal to the amount subscribed.

4. Term. In Section 1.8 note that this is 25 year term agreement. The term does not commence until the date of commercial operation for each particular project (as noted above, the US Solar Agreement may cover several projects).
5. Commencement. There are no assurances that US Solar will construct solar gardens (each a "Project") adequate to meet the CSG allocation to the City. Section 10.1 (a) (i) would allow the City to terminate the US Solar Agreement if:

Construction of that Project is not completed within twenty-four (24) months of our receipt of NSP determining that Project's CSG application is complete, as extended by Force Majeure, and additional Project capacity does not exist.

There are several problems with this clause. If NSP never determines that the CSG application of US Solar is complete, the US Solar Agreement may live in perpetuity as it will never commence and the City will not have a right to terminate. A right to terminate exists only if the project is not completed within 24 months of US Solar receiving NSP's determination that the CSG application is complete.

Additionally, there are no assurances that US Solar will ever be able to provide to NSP all of the solar energy covered in the US Solar Agreement (thereby denying the City the maximum benefit of the bill credits). If the total capacity the City subscribes for is never constructed, the City does not have a specific and clear right to terminate the US Solar Agreement. That could give rise to a situation where the City would live with an underperforming agreement for a very long period of time and would not have the ability to separately contract with another solar garden provider because the US Solar Agreement is effectively not terminable.

My simple and straight forward solution for this issue is to add a clause that the City has the right to terminate the US Solar Agreement if US Solar cannot provide to NSP 100% of the City's CSG allocation within 24 months of the date of the US Solar Agreement.

6. US Solar Termination Rights. Please note Section 10.1 (b), particularly subsection (iv), which effectively allows US Solar, prior to the commencement of construction, to terminate the US Solar Agreement for any reason.
7. Cancellation Penalties. If the City is in default of the US Solar Agreement or attempts to reduce its subscription, it is liable to US Solar for either the fuller of the pro rata amount of its subscription payments over the remaining life of the US

Solar Agreement determined by using something called a “Unsubscribed Energy rate” (not defined) in the CSG tariff. This is apparently a tariff included within NSP’s tariff. The City needs to see this tariff and needs to recognize that this amount may change over the 25 year life of the US Solar Agreement in order to fairly assess its risk for termination liability. The termination liability could be a very significant amount of money.

8. Releases and Financing. Although US Solar states that it is an owner/operator of solar gardens, it is important that the City realize that it is not uncommon in this industry that the individual or entity that collects and enters into these subscriptions agreements ultimately sells them to a third party either before or after construction of the solar gardens. The US Solar Agreement makes it clear that US Solar has the absolute right to transfer and assign the subscription agreement and, upon such transfer or assignment, US Solar has no further obligations to the City. Additionally, (and as is common in these agreements), US Solar has the right to make a collateral assignment of the US Solar Agreement to its lenders.
9. Arbitration. The US Solar Agreement has an arbitration clause which requires any disputes to be resolved by a third party arbitration service. Although arbitration does have some advantages in terms of a cost effective means of reaching a resolution of a dispute, cities typically prefer to litigate disputes in district court. Additionally, if there is going to be an arbitration clause in the US Solar Agreement, my recommendation would be that arbitration is conducted by the American Arbitration Association which is generally regarded as the leading arbitration organization in this country. I suspect one reason US Solar suggests using JAMS is that its fee structure for providing arbitration services is generally less than the American Arbitration Association.
10. Exhibits. Note that critical exhibits to the US Solar Agreement (B, D, and G) are blank. This should be rectified before any agreement is signed.

#### CONCLUSION

If I can provide additional information or assistance, please let me know.

[https://mhslaw.sharepoint.com/sites/clients/1818/40767/draftdocs/memo to city of mayer 08.31.16.docx](https://mhslaw.sharepoint.com/sites/clients/1818/40767/draftdocs/memo%20to%20city%20of%20mayer%2008.31.16.docx)



## Memorandum

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Item: Cleaning Contract –

Meeting Date: May 13, 2019

Presented By: Margaret McCallum, City Administrator

### **Timeline Details:**

Last year, in 2018, the City was notified by its long-time cleaning contractor that they would be done with services on May 31, 2018.

At the June 25, 2018 the City Council asked that a contract between the City of Mayer and the lowest bidder be brought to them for review and approval. The City signed an agreement with Minnesota Services in July 2018.

In February 2019, the City moved to dissolve the working agreement with Minnesota Services. Minnesota Services end date was March 31, 2019.

Staff solicited proposals through social media, the newspaper and newsletter from cleaning contractors using our current level of service schedule. All common areas, hallways, restrooms would be cleaned 1 day per week. The contractor would also clean after scheduled community center events.

All contractors would provide their own cleaning supplies and equipment, with the option to use the City's floor scrubber. The City would continue to supply consumables such as toilet paper, hand towels, etc.

Staff received three proposals/bids from companies who are located and work in the west metro.

Staff performed reference checks on all three and all came back satisfactory.

Staff also asked each company for proof of liability insurance.

Staff reviewed the proposals for the cost of services.

	<b>Squeaky Clean – Linda</b>	<b>Squared Services</b>	<b>Mary Giese</b>	<b>MN SERVICES (previous contract)</b>
<b>Cost</b>	\$435.00/Month	\$182 for first to cleanings \$92.00/week after	\$150.00/Week \$250.00/Deep Clean	\$415.00/Month
<b>Event Cost</b>	\$50/Event	\$135/Event	Info. Not Provided	\$50/Event
<b>Yearly Estimated General Cost</b>	\$5,220.00	\$4,964.00	\$7,800.00	\$4,980.00
<b>Yearly Estimated Event Cost (Based on 20 large events)</b>	\$1,000.00	\$2,700.00		\$1,000.00
<b>Total Yearly Estimated Cost</b>	<b>\$6,220.00</b>	<b>\$7,660.00</b>	<b>Above \$7,800</b>	<b>\$5,980.00</b>

The General Maintenance Budget for Cleaning Services is \$6,000 for the 2019 year.

Event Cleaning Costs are paid for through contract fees for renting out the facility and are covered through the event fees.

Taken together, staff is recommending the Council approve staff to move forward with drafting a contract with Squeaky Clean Cleaning Services because the overall yearly costs would be the lowest based on general cleaning and estimated cleaning event costs.

**Additional Information:**

None.



**APPLICATION DATA**

**Meeting Date:** May 13, 2019  
**Applicant/Owner:** Peter Johnson  
**Address & PID Number:** 505 Shimmcor Street - 50.70000.90  
**Legal Description:** Lot 5, Block 2, Sell Commercial Industrial Park, Carver County, Minnesota.

**ACTION REQUESTED**

To approve or deny a site plan review for an accessory storage building to be located at 505 Shimmcor Street.

**BACKGROUND DATA**

**Future Land Use**

**Classification:** Both properties are designated Existing MUSA Infill/Redevelopment on the future land use map. The proposed designation in the 2040 Comprehensive Plan update is Industrial and the proposed accessory storage building is consistent with both designations.

**Zoning**

**Classification:** The site is located in the Sell Commercial Industrial Park and is zoned (C/I) Commercial/Industrial District. The following list shows the required and proposed minimum requirements for structures within the C/I district.

<u>C/I Commercial/Industrial</u>	<u>Requirement</u>	<u>Proposed</u>
Front yard setback:	30 feet	Over 180 feet
Rear yard setback:	30 feet	30 feet
Side yard setback:	20 feet	Over 20 feet both side yards
Lot coverage:	85%	74.9% at full buildout
Building Height:	40 feet	25 feet

The proposed use is storage, which is a permitted use in the C/I district.

**Comments**

**Received:** No comments from the public have been received as of the date of the this memo.

**Background:**

Plans have been submitted to construct an accessory building on property located in the Shimmcor industrial park. A site plan was previously approved for this property around 2005 which consisted of multiple buildings and paved access to the buildings. Two access points were proposed from Shimmcor Street, one near the north property line and one near the south property line. The southern access has been paved and pavement extends around the existing buildings on the south part of the property, while the northern access has curb in but is not paved at this time.

The property currently consists of three existing storage buildings. One larger building in the center of the lot and two smaller buildings located just north of the south property line. The two smaller buildings are approximately 60 feet long by 40 feet wide and thirty feet north of the south property line. The larger building is approximately 100 feet wide by 120 feet deep. The original site plan proposed a total of four buildings with the larger building designed to allow for expansion to the north and another storage building to be located on the east side of the lot.

The proposed building is a different size than what was originally proposed and because of this the site plan review is required. The applicant is also proposing to extend the paving to the north building line of the proposed building as was shown on the original site plan.

Site plan reviews are required for any new structures except single family residential so the proposed storage building will be required to go through the site plan review process. The zoning ordinance also states that site plan modifications, which is what is being proposed, shall be applied for and administered as required for new site plan. It should also be noted that the proposed building is different than the site plan that was approved in 2005. The site plan review requirements are listed under Section 152.031 of the zoning ordinance. Site plan review requires the following submittal requirements.

- (1) *Boundary survey of parcel including identification of all monuments.*
- (2) *Scaled location of all buildings, structures, driveways, sidewalks, trails, parking stalls, and curbing.*
- (3) *Scaled identification of all setback dimensions from property lines.*
- (4) *Scaled locations of all existing and proposed utilities and easements.*
- (5) *Scaled depictions of floor plans for each story.*
- (6) *Scaled depictions of each building elevation and descriptions of exterior building materials and color schemes.*
- (7) *Scaled site grading plans, including erosion and sedimentation control mechanisms and procedures.*
- (8) *Scaled delineations of any shoreland, floodplain, or wetland areas on the site.*
- (9) *Identification of any floodplain or wetland encroachments and detailed mitigation plans.*
- (10) *Detailed landscape plans, illustrating size, types, and locations of all materials, a description of site seeding or sodding, a description of the timetable for site landscaping, and the identification of any irrigation systems.*
- (11) *Detailed descriptions of any site fencing, including type, location and height.*
- (12) *All plans shall be dated and shall bear the name(s) of the preparer(s), including professional registrations or certifications when appropriate or required.*

Site plans can also expire and unless the City Council specifically approves a different time when action is officially taken on the request, site plans which have been approved shall expire without further action by the Planning Commission or the City Council within one year of the date the site plan is approved, unless the applicant has substantially started the construction of any building, structure, addition or alteration, or use requested as part of the approved site plan. The applicant shall have the right to submit an application for time extension before the expiration of the one year period and the applicant shall apply for an extension thereof by completing and submitting a request for extension, including the renewal fee as established by City Council resolution. The request for extension shall state facts showing a good faith attempt to complete any building, structure, addition or alteration, or use approved in the site plan. Said extension shall be presented to the Planning Commission for a recommendation and to the City Council for a decision.

At the May 7, 2019 Planning Commission meeting, the Planning Commission to recommend approval of the site plan review. As part of the approval they also voted to

waive the 30% requirement of having a different material than the rest of the front per the zoning ordinance requirements.

**Building Materials:**

The applicant will be required to satisfy the building design standards under section 152.101 of the zoning ordinance. The following language applies.

*The purpose of establishing building design standards is to encourage development of aesthetically pleasing structures, to create minimum standards for non-residential design, and to protect the investments of non-residential building owners.*

*(B) Buildings located in the C/I District must include design treatments to all-metal-exterior structures. Such treatments include but are not limited to steep-pitch roofs, awnings, wainscoting, color bands, shutters, extra windows, and combinations of other building materials.*

Under Section 152.060, the C/I district, the following language also applies to the building materials.

*Building Materials.* *Face materials, which rapidly deteriorate or become unsightly such as galvanized metal, unfinished structural clay shall not be used.*

*Permitted Building Materials.* *Structural systems of all buildings shall be in compliance with the Uniform Building Code as adopted and in effect in the City of Mayer at the time of application for a building permit. The lower 30% of the exterior front of all buildings, as measured from ground elevation, facing the main access street shall consist of materials comparable in grade and quality to the following.*

- (a) Brick;*
- (b) Natural stone;*
- (c) Pre-cast concrete units and concrete block, provided that surfaces are molded, serrated or treated with a textured material in order to give the wall surface a three-dimensional character;*
- (d) Wood, provided surfaces are finished for exterior use and only woods of proven exterior durability such as cedar, redwood and cypress.*

*Variance to 30% Requirement.* *The 30% requirement may be varied as determined appropriate to accommodate taller buildings or new buildings constructed next to or in the immediate vicinity of other buildings in order to provide a uniform and consistent effect for the area.*

*Planning Commission Approval.* *If material other than those listed above or a variance for the 30% requirement is proposed, it shall be subject to review and approval by the Planning Commission.*

The proposed building does not satisfy the 30% requirement of materials such as brick, stone, etc. This will be a condition of approval to satisfy this requirement unless the Planning Commission gives a variance to the 30% requirement. In this case this may be applicable since the building is behind the main building located on the property and not entirely visible from Shimmcor Street.

**Off-Street Parking:**

The applicant is proposing a storage building which is considered other industry in the off-street parking section of the City zoning ordinance. Other industry requires three off-street parking spaces per every 1,000 square feet. The proposed building is to be 40 feet by 42 feet in size or 1,680 square feet, which would require five off-street parking spaces. The applicant is proposing to extend the pavement from the existing section to the north end of the building. This would allow for an addition five off-street parking spaces.

**Landscaping:**

Landscaping was installed with the original construction along Shimmcor Street, the south property line and the east property line. This landscaping is sufficient for the

proposed accessory storage building site plan review. Landscaping in the C/I district should include the following.

*One over-story tree for every 30 feet of street frontage.*

The property in question has 400 feet of street frontage so fourteen trees would be required and more than fourteen trees are already located on the property so the landscaping requirements are satisfied.

**Outdoor Storage:**

All materials, supplies, merchandise or other similar matter not on display for direct sale, rental or lease to the ultimate consumer or user, except those items exempt under section 152.090 of the zoning ordinance, shall be stored within a completely enclosed building or within the confines of a 100% opaque wall or fence not less than six feet or more than eight feet in height. Such a screen wall or fence shall be designed and constructed as to be architecturally harmonious with the principal structure and located so as to not extend within twenty-five feet of any street. Landscaping (trees, shrubs, grass and other plantings) shall be on the right-of-way side of any screening or fencing. A screen planting may be substituted for a screen wall or fence at the discretion of the City Council, provided that any such screen planting shall fulfill the foregoing height and opacity requirements throughout each season of the year within 24 months after date of planting, and that no such screen planting shall be located across any existing easements.

**Surface Water Management:**

Stormwater management for the site is provided by a regional system constructed with the initial improvements for the Sell Commercial Industrial Park. The applicant is proposing to pave more surface on the lot but it is consistent with the original site plan as far as the impervious surface goes. The original site plan showed a total impervious surface are of 74.9% at full buildout, which is under the 85% requirement. The City Engineer will review and comment on any surface water management related questions.

**Signage:** No signage is being proposed at this time.

**Miscellaneous Provisions:**

All general lighting employed on site must be directed away from adjoining properties. Direct or reflected glare from flood lights and spot lights, as differentiated from general illumination on the site, shall not be visible beyond the subject parcel. Noise and vibration generated from any use shall be in compliance with and regulated by the MPCA rules.

**CONDITIONS**

Site Plan Review

The following conditions are recommended to be included if the City Council approves the site plan. These conditions may be subject to modification depending upon the outcome at the City Council meeting.

1. Building Design Standards. That the building design shall meet the requirements of section 152.060 (C/I) Commercial/Industrial District (F) Special Requirements and 152.101 Building Design Standards of the zoning ordinance. The Planning Commission voted to waive the 30% front elevation building material requirement.
2. Signage. That any proposed signage meet the standards set forth in Sections 152.120 through 152.133 of the City Code and that all required sign permits are issued prior to installation of any signage.

3. Lighting. All general lighting employed on site must be directed away from adjoining properties. Direct or reflected glare from flood lights and spot lights, as differentiated from general illumination on the site, shall not be visible beyond the subject parcel.
4. Noise and Vibration. Noise and vibration generated from any use shall be in compliance with and regulated by the MPCA rules.
5. Outdoor Storage. Any outdoor storage shall meet the requirements of section 152.090 Outdoor Storage and section 152.091 Screening the Zoning Ordinance.
6. Stormwater Management. Stormwater shall be managed in accordance with the National Urban Runoff Program (NURP) standards for the design of new stormwater ponds. The provisions of the Minnesota Pollution Control Agency's urban "best management practices," titled "Protecting Water Quality in Urban Areas," shall be used to review any proposed development in order to reduce non-point source pollutant loadings in stormwater runoff.
7. Building Permit. All building permits that are required, shall be approved, paid for and issued prior to construction.
8. Expiration. Unless the City Council specifically approves a different time when action is officially taken on the request, site plans which have been approved shall expire without further action by the Planning Commission or the City Council within one year of the date the site plan is approved, unless the applicant has substantially started the construction of any building, structure, addition or alteration, or use requested as part of the approved site plan. The applicant shall have the right to submit an application for time extension before the expiration of the one year period and the applicant shall apply for an extension thereof by completing and submitting a request for extension, including the renewal fee as established by City Council resolution. The request for extension shall state facts showing a good faith attempt to complete any building, structure, addition or alteration, or use approved in the site plan. Said extension shall be presented to the Planning Commission for a recommendation and to the City Council for a decision.
9. City Engineer Review. The applicant shall satisfactorily address any issues raised by the City Engineer, if any.

**CITY COUNCIL ACTION REQUIRED**

After review and discussion by the members of the City Council, a motion is in order to approve, deny or to table the site plan review.

Possible action items - Site Plan Review

1. Approve the site plan review subject to conditions.
2. Table the site plan review to a date specific, and provide the applicant with direction on the issues that have been discussed.
3. Deny the site plan review.

If you have any questions relating to the site plan review prior to the City Council meeting, please feel free to contact me at: [jandersonmdg@gmail.com](mailto:jandersonmdg@gmail.com) or call direct at 952-855-4596.

Sincerely,

MUNICIPAL DEVELOPMENT GROUP, LLC

*John Anderson*

John Anderson, Associate  
Consulting Planner, City of Mayer

#### **LIST OF ATTACHMENTS**

Exhibit A - 505 Shimmcor Street Aerial Location Map

Exhibit B - Site Plan

Exhibit C - Renderings of the Proposed Building

Exhibit A - 505 Shimmcor Street Aerial Location Map

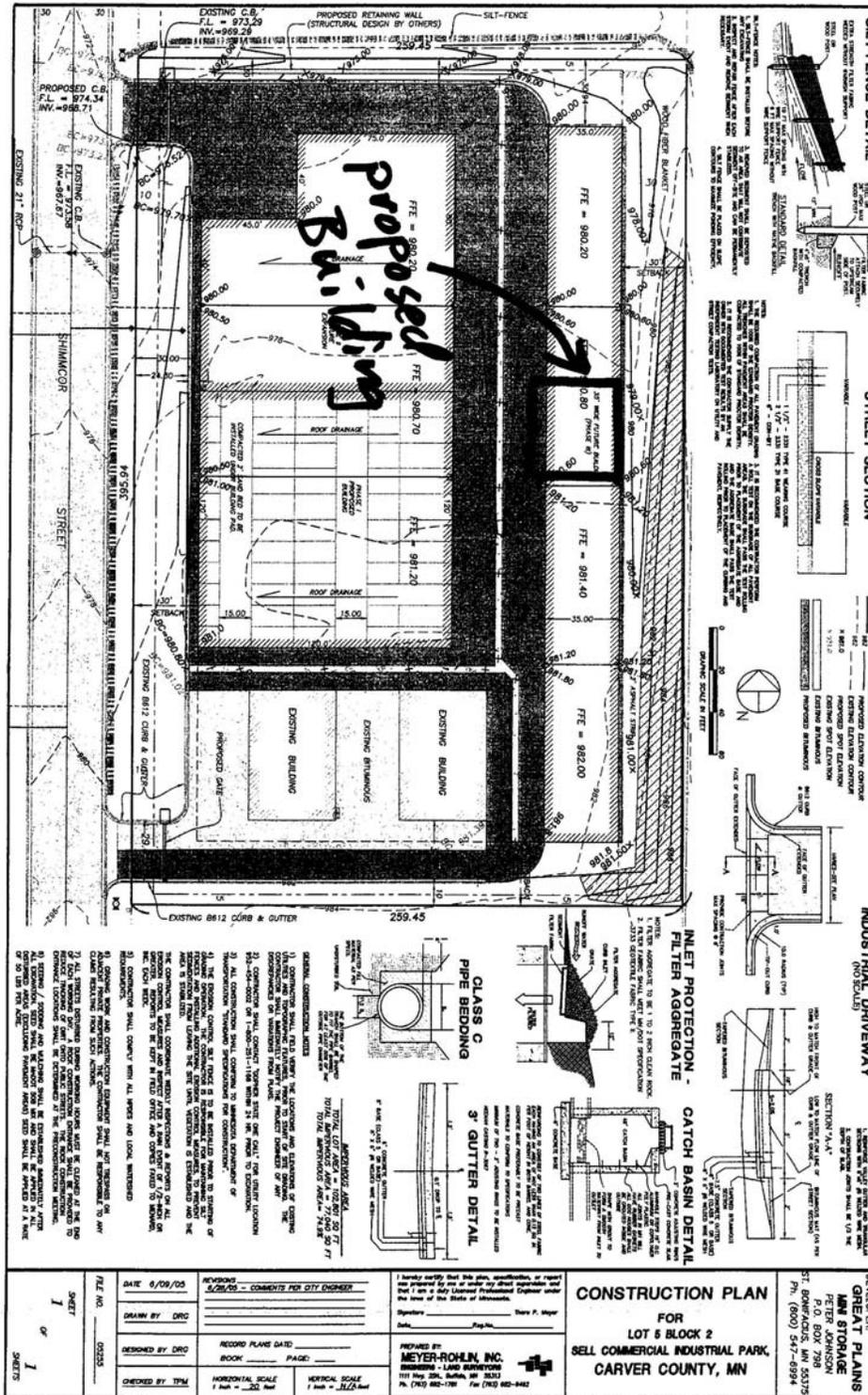


This map was created using Carver County's Geographic Information Systems (GIS), it is a compilation of information and data from various City, County, State, and Federal offices. This map is not a surveyed or legally recorded map and is intended to be used as a reference. Carver County is not responsible for any inaccuracies contained herein.

Map Date: 4/10/2019

25562 Willow Lane • New Prague, MN 56071 • (952) 758-7399 • Fax: (952) 758-3711  
Email: [jandersonmdg@gmail.com](mailto:jandersonmdg@gmail.com) • [www.municipaldevelopmentgroup.com](http://www.municipaldevelopmentgroup.com)

Exhibit B - Site Plan





# JOHNSON OUTBUILDING

CONCEPT  
04 . 18 . 2019

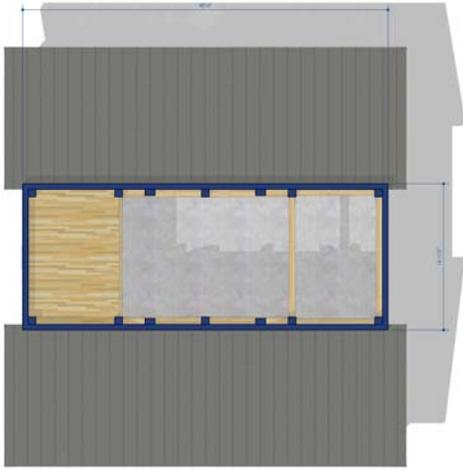


JOHNSON OUTBUILDING

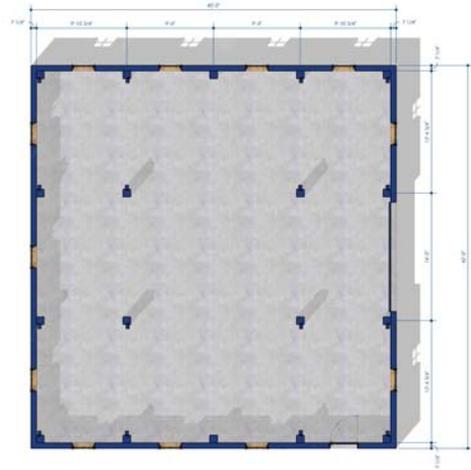
04 . 18 . 2019

COVER SHEET A01

Exhibit C - Renderings of the Proposed Building Page 2



2 LOFT PLAN  
SCALE: 1/8" = 1'-0"



1 1ST FLOOR PLAN  
SCALE: 1/8" = 1'-0"

JOHNSON OUTBUILDING

04.10.2017

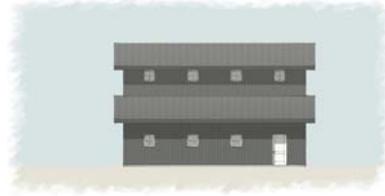
FLOOR PLANS A02



Exhibit C - Renderings of the Proposed Building Page 3



4 RIGHT SIDE  
SCALE: 1/8" = 1'-0"



2 LEFT SIDE  
SCALE: 1/8" = 1'-0"



3 REAR  
SCALE: 1/8" = 1'-0"



1 FRONT ELEVATION  
SCALE: 1/8" = 1'-0"

JOHNSON OUTBUILDING

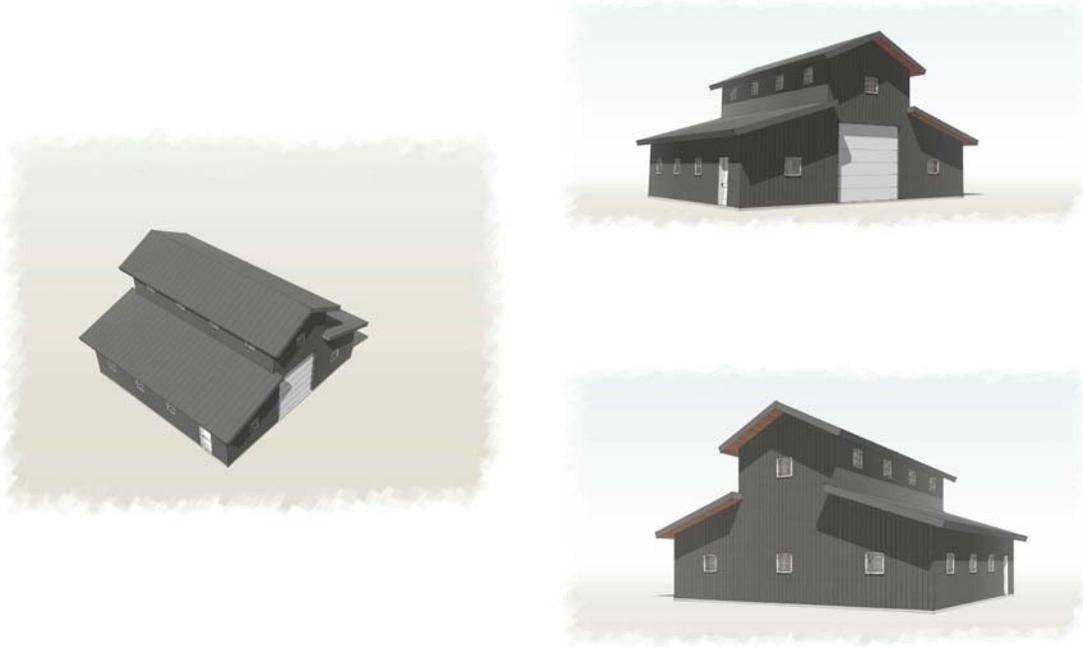
04.10.2017

EXTERIOR ELEVATIONS

A03



Exhibit C - Renderings of the Proposed Building Page 4



JOHNSON OUTBUILDING

04.10.2017

EXTERIOR PERSPECTIVES



Exhibit C - Renderings of the Proposed Building Page 5



JOHNSON OUTBUILDING

04.10.2017

INTERIOR PERSPECTIVES



**CITY OF MAYER  
CITY COUNCIL RESOLUTION 05-13-19-19**

**RESOLUTION APPROVING THE SITE PLAN A ACCESSORY STORAGE BUILDING AT 505  
SHIMMCOR STREET**

WHEREAS, the Peter Johnson (the "Applicant" and "Owner"), has submitted a request for site plan approval for a accessory storage building to be located in the Sell Commercial Industrial Park in conformance with Section 152.031 of the Zoning Ordinance relating to site plan review on property located at 505 Shimmcor Street, with a PID number of 50.70000.90 (the "Property"); and

WHEREAS, the Property is zoned (C/I) Commercial/Industrial District; and

WHEREAS, the Property is designated Existing MUSA Infill/Redevelopment on the future land use map and no building permit shall be issued until a site plan has been reviewed and approved by the City; and

WHEREAS, the proposed use of a accessory storage building is a permitted use in the (C/I) Commercial/Industrial District; and

WHEREAS, a copy of the proposed site plan materials and application were available at the City Offices for public viewing; and

WHEREAS, section 152.031 of the Zoning Ordinance outlines Information Requirements and Procedure for site plan approval; and

WHEREAS, the Planning Commission reviewed the site plans at the May 7, 2019 Planning Commission meeting at which time they recommended approval of the site and building plans, subject to conditions; and

WHEREAS, the City Council reviewed the site plan on May 13, 2019; and

WHEREAS, the City Council makes the following findings of fact in support of granting approval of the site plans:

- A. The legal description of the subject properties is: Lot 5, Block 2, Sell Commercial Industrial Park, Carver County, Minnesota.
- B. The Planning Report dated May 9, 2019 shall be the governing document which includes the following Exhibits:
  - Exhibit A - 505 Shimmcor Street Aerial Location Map
  - Exhibit B - Site Plan
  - Exhibit C - Renderings of the Proposed Building
- C. The aerial location map for 505 Shimmcor Street is attached as Exhibit A.
- D. The site plan is attached as Exhibit B.
- E. The renderings of the proposed building are attached as Exhibit C.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Mayer, Minnesota, that it hereby approves the site plan for a accessory storage building, subject to the following conditions:

- 1. Building Design Standards. That the building design shall meet the requirements of section 152.060 (C/I) Commercial/Industrial District (F) Special Requirements and 152.101 Building Design

Standards of the zoning ordinance. The Planning Commission voted to waive the 30% front elevation building material requirement.

2. Signage. That any proposed signage meet the standards set forth in Sections 152.120 through 152.133 of the City Code and that all required sign permits are issued prior to installation of any signage.
3. Lighting. All general lighting employed on site must be directed away from adjoining properties. Direct or reflected glare from flood lights and spot lights, as differentiated from general illumination on the site, shall not be visible beyond the subject parcel.
4. Noise and Vibration. Noise and vibration generated from any use shall be in compliance with and regulated by the MPCA rules.
5. Outdoor Storage. Any outdoor storage shall meet the requirements of section 152.090 Outdoor Storage and section 152.091 Screening the Zoning Ordinance.
6. Stormwater Management. Stormwater shall be managed in accordance with the National Urban Runoff Program (NURP) standards for the design of new stormwater ponds. The provisions of the Minnesota Pollution Control Agency's urban "best management practices," titled "Protecting Water Quality in Urban Areas," shall be used to review any proposed development in order to reduce non-point source pollutant loadings in stormwater runoff.
7. Building Permit. All building permits that are required, shall be approved, paid for and issued prior to construction.
8. Expiration. Unless the City Council specifically approves a different time when action is officially taken on the request, site plans which have been approved shall expire without further action by the Planning Commission or the City Council within one year of the date the site plan is approved, unless the applicant has substantially started the construction of any building, structure, addition or alteration, or use requested as part of the approved site plan. The applicant shall have the right to submit an application for time extension before the expiration of the one year period and the applicant shall apply for an extension thereof by completing and submitting a request for extension, including the renewal fee as established by City Council resolution. The request for extension shall state facts showing a good faith attempt to complete any building, structure, addition or alteration, or use approved in the site plan. Said extension shall be presented to the Planning Commission for a recommendation and to the City Council for a decision.
9. City Engineer Review. The applicant shall satisfactorily address any issues raised by the City Engineer, if any.

Adopted by the Mayer City Council this 13th day of May, 2019.

---

Mayor Mike Dodge

Attest:

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Margaret McCallum, City Administrator

The following Council Members voted in favor:  
The following Council Members voted against or abstained:

Whereupon the motion was duly passed and executed.

Published:  
Filed with Carver County:

Attachments:  
Exhibit A - 505 Shimmcor Street Aerial Location Map  
Exhibit B - Site Plan  
Exhibit C - Renderings of the Proposed Building

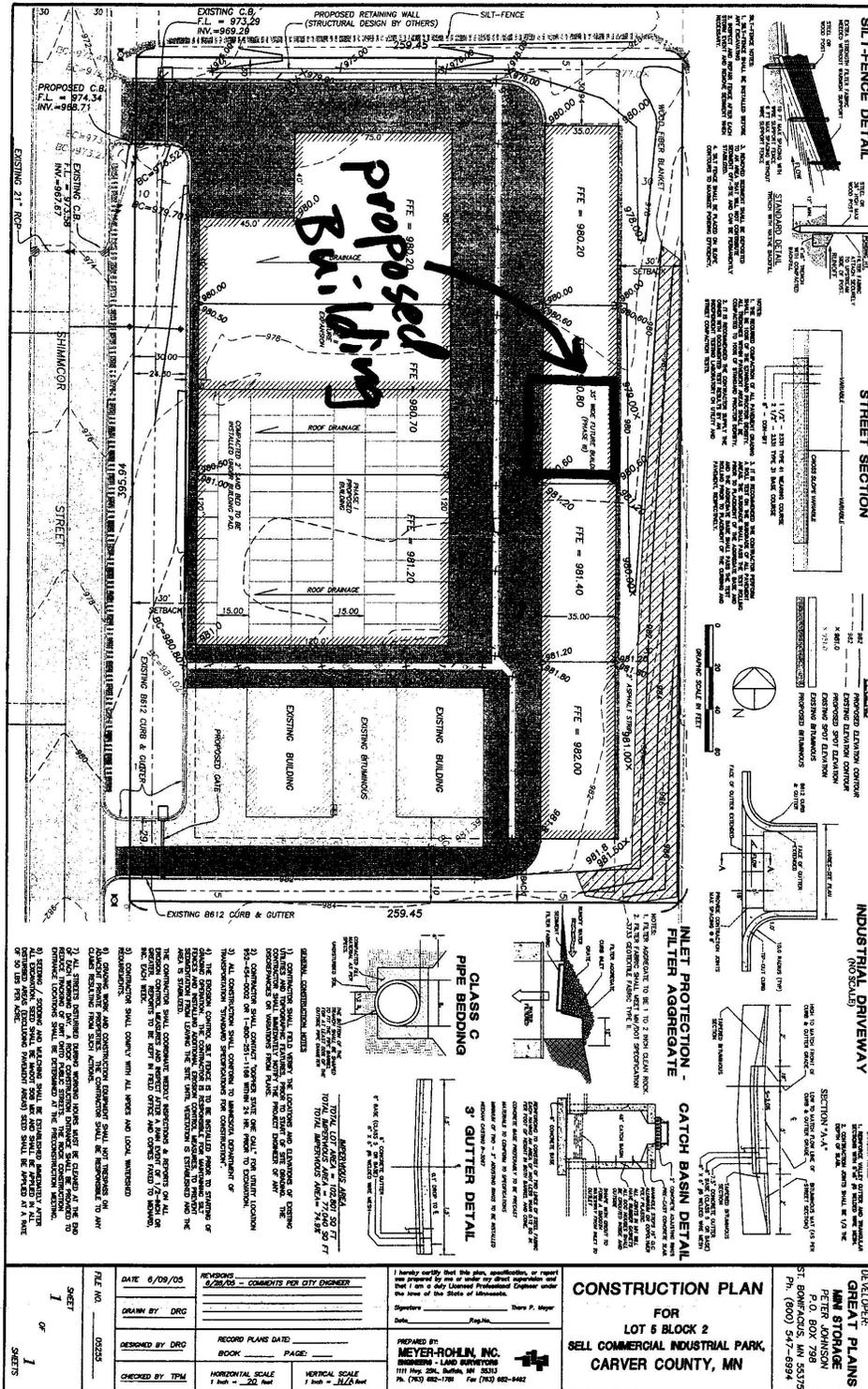
Exhibit A - 505 Shimmcor Street Aerial Location Map



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Map Date: 4/10/2019

Exhibit B - Site Plan



<p>DATE: 6/09/05          DRAWN BY: DRG          DESIGNED BY: DRG          CHECKED BY: PML</p>		<p>REVISIONS:          2/28/05 - COMMENTS FOR CITY ENGINEER</p>		<p>REVISIONS:          2/28/05 - COMMENTS FOR CITY ENGINEER</p>	
<p>SHEET 1 OF 1 SHEETS</p>		<p>RECORD PLANS DATE: _____          BOOK: _____ PAGE: _____</p>		<p>APPROVED BY: _____          DATE: _____</p>	
<p>HORIZONTAL SCALE: 1" = 20'</p>		<p>HORIZONTAL SCALE: 1" = 20'</p>		<p>VERTICAL SCALE: 1" = 20'</p>	
<p>CONSTRUCTION PLAN FOR LOT 5 BLOCK 2 SELL COMMERCIAL INDUSTRIAL PARK, CARVER COUNTY, MN</p>		<p>PREPARED BY: MEYER-ROHLIN, INC. ENGINEERS - LAND SURVEYORS          1111 Hwy. 101, Suite 100, MN 55004          Ph. (763) 882-1781 Fax (763) 882-8482</p>		<p>REGISTERED PROFESSIONAL ENGINEER          PETER JOHNSON          No. 0000000000          Ph. (600) 547-6994</p>	

Exhibit C - Renderings of the Proposed Building Page 1



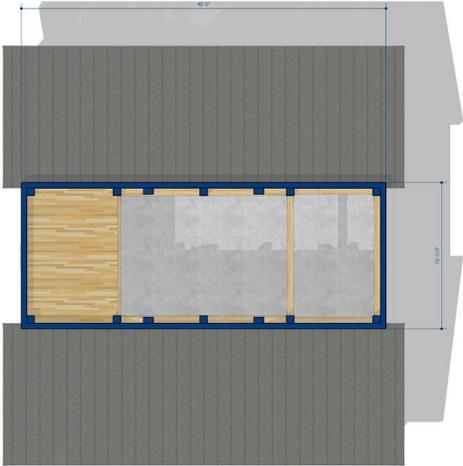
# JOHNSON OUTBUILDING

CONCEPT  
04 . 18 . 2019

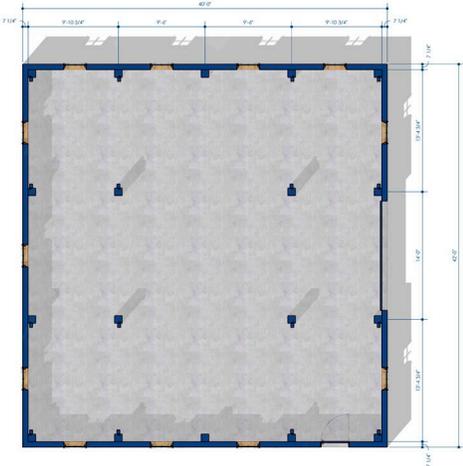
JOHNSON OUTBUILDING 04 . 18 . 2019



Exhibit C - Renderings of the Proposed Building Page 2

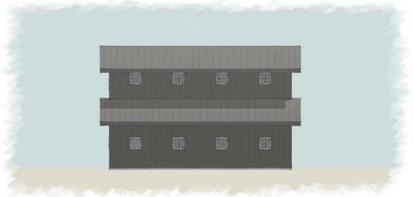


2 LOFT PLAN  
SCALE: 1/8" = 1'-0"

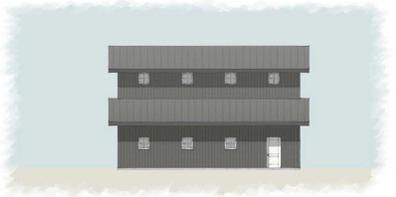


1 1ST FLOOR PLAN  
SCALE: 1/8" = 1'-0"

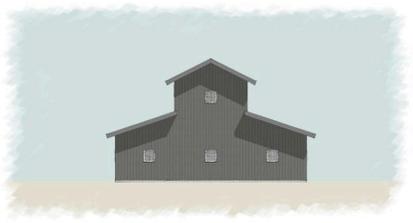
Exhibit C - Renderings of the Proposed Building Page 3



4 RIGHT SIDE  
SCALE: 1/8" = 1'-0"



2 LEFT SIDE  
SCALE: 1/8" = 1'-0"



3 REAR  
SCALE: 1/8" = 1'-0"



1 FRONT ELEVATION  
SCALE: 1/8" = 1'-0"



Exhibit C - Renderings of the Proposed Building Page 4

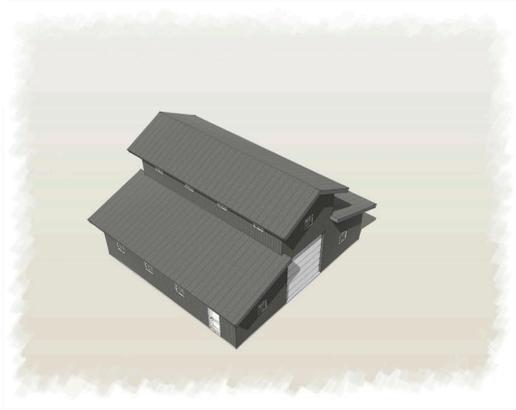


Exhibit C - Renderings of the Proposed Building Page 5



**City of Mayer**  
**Planning Commission**  
Meeting Minutes  
Tuesday, May 7, 2019

**Commission Members Present:** Council Liaison Tice Stieve-McPadden, Commissioners Les Hahn, Michael Sommerfeld, Don Wachholz, Barney Johnson and Patty Lanting.

**Commission Members Absent:** Chairperson Tom Stifter.

**Others Present:** Peter Johnson, Chad Zaback and David Weinard.

**Staff Present:** City Administrator, Margaret McCallum

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**CALL MEETING TO ORDER.**

Meeting called to order at 6:30 PM by Vice Chairperson Lanting.

**ADOPT AGENDA.**

A motion to approve the agenda was made by Commissioner Hahn and seconded by Commissioner Johnson. Motion carried 6/0.

**APPROVAL OF MINUTES.**

A motion to approve the March 5, 2019 Planning Commission minutes as amended was made by Commissioner Johnson and seconded by Commissioner Wachholz. Motion carried 6/0.

**SITE PLAN REVIEW FOR A ACCESSORY BUILDING TO BE LOCATED AT 505 SHIMMCOR STREET**

At 6:35 PM, City Administrator, McCallum, presented the information for the site plan review.

The background information included a request from applicant, Peter Johnson, to approve a site plan review for an accessory building to be located at 505 Shimmcor Street.

The property is zoned (C/I) Commercial/Industrial. The proposed building location would meet the required setbacks for the district. The use of storage is a permitted use in this district.

A site plan was previously approved for this property in 2005 which consisted of multiple buildings and paved access to the buildings. The property currently has 3 existing storage buildings. The original plan called for 4 buildings with the ability for expansion.

The proposed new building is different in size from the original site plan. The applicant is also planning to extend the paving to the north building line of the proposed building as shown in the original site plan.

Site plans are required for all non-residential buildings.

With regards to building materials, the applicant is required to satisfy the building design standards of the Code. The lower 30% of the exterior front of the building is to consist of materials that are comparable in grade and quality like brick, stone, concrete or wood.

The Planning Commission, if it deems appropriate, can waive the 30% condition through a variance. It was deemed possibly applicable because the building is tucked behind the main building and not entirely visible from Shimmcor Street.

The applicant would add the appropriate parking spaces; 5 additional spaces.

Landscaping was installed with the original construction along Shimmcor and trees were planted. Therefore this requirement is satisfied.

Outdoor storage has to meet City Code.

Stormwater Management is being reviewed by the City Engineer. However the total new impervious surface would be 74.9% which is under the 85% requirement.

No signage being proposed. Lighting has to meet code.

If approved by the Commission staff recommended conditions related to building design standards, signage, lighting, noise and vibration, outdoor storage, stormwater management, building permits, expiration of the site plan and City Engineer review.

Hahn asked which way the front of the building would face. Johnson informed that it would be looking west (facing Shimmcor) but that it is located in the back of the property behind the main building.

Hahn asked was material the applicant would be using to satisfy the 30% front coverage.

Johnson informed that he would be covering the building sides 100% with a finished cedar wood siding.

Hahn expressed concern over a wood siding and the long-term maintenance of it. He stated that he would rather see a painted steel.

Johnson said that the roof would be a blue color; the same as the other on-site buildings.

Hahn stated that he would like to see the building match more.

Johnson said that he is not against that and would take the Commission's recommendation. He informed that he would be using the building for personal storage and use.

Lanting said she liked uniformity as well. She said she likes the look of the building.

**A motion to recommend approval of the site plan with the conditions listed and with a variance to the 30% condition was made by Commissioner Hahn and seconded by Commissioner Wachholz. Motion carried 6/0.**

#### **NEXT MEETING.**

Next scheduled meeting is Tuesday, June 4, 2019.

#### **COMMISSIONERS REPORT.**

Lanting asked about the Schmidty's Gas station and if it was in the process of being sold. McCallum responded that it was sold.

Hahn handed out information on storm shelters and proposed that the Commission look into creating an ordinance centered around creating shelters for developments that have slab on grade housing.

He expressed concern for the residents of these properties not have adequate shelter in the event of severe weather.

The Commission reviewed the information provided by Hahn and commended his work on the topic.

**Hahn moved to move forward with a storm shelter ordinance and to direct staff to do additional research on the topic and to bring back to the Planning Commission for further discussion and review. Wachholz seconded. Motion passed 6-0.**

**ADJOURNMENT.**

A motion was made by Commissioner Wachholz and seconded by Commissioner Johnson to adjourn the meeting at 7:30 PM. Motion carried 6/0.