



City of Grand Island

Tuesday, June 13, 2017

Council Session

Item G-9

#2017-163 - Approving Mutual Nondisclosure Agreement with Sol Systems

Staff Contact: Tim Luchsinger, Jerry Janulewicz

Council Agenda Memo

From: Timothy Luchsinger, Utilities Director
Jerry Janulewicz, City Attorney

Meeting: June 13, 2017

Subject: Mutual Nondisclosure Agreement with Sol Systems

Presenter(s): Timothy Luchsinger, Utilities Director

Background

State statute requires that public utilities in Nebraska provide its customers with adequate electric service at as low of an overall cost as possible, consistent with sound business practices. To do so, public utilities must look at long-term, in addition to immediate, issues in an overall context.

The Utilities Department has taken an approach in its energy supply strategy to incorporate multiple facilities using a blend of fuel sources. This allows flexibility in managing costs that can occur because of market conditions due to industry issues or environmental concerns. Energy supply planning must also take into account the long timeframes that are common in electric generation development, therefore, utilities plan for conditions projected at least five to ten years in the future, sometimes even longer.

Traditional energy sources in Nebraska have been based on coal because of the close proximity of mines in Wyoming and a robust railroad system through this area. These have been supplemented with hydro, natural gas and nuclear facilities, resulting in low cost power to Nebraska customers.

Due to developing environmental concerns, the State's utilities have been developing facilities with renewable energy sources, primarily wind generation because of its potential compared to solar or biofuels. Grand Island participated in some of these early projects on a minor basis to learn more of the details of wind generation costs and operational issues.

On May 8, 2012 Council approved a resolution to direct the Utilities Department to evaluate potential renewable energy projects and provide to Council recommendations for participation as needed to maintain a balanced energy portfolio.

Since that time, the City has entered into Power Purchase Agreements with developers for two projects, Prairie Breeze located at Elgin, and Prairie Hills in Custer County, for a total of 86 megawatts, or about 45 percent of Grand Island's annual energy requirements.

Discussion

As part of the Request for Proposals (RFP) issued last summer for renewable energy that resulted in the selection of the Prairie Hills project, the Department also solicited solar projects that could be done on a pilot program basis, similar to the early wind projects, which would allow first-hand experience to solar generation costs and operational issues.

An evaluation of the proposals resulted in a selection of Sol Systems as the most favorable respondent to the solar portion of the RFP. To allow for negotiations of a power purchase agreement, Sol Systems has asked for the execution of a Mutual Nondisclosure Agreement.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the Mutual Nondisclosure Agreement with Sol Systems.

Sample Motion

Move to approve the Mutual Nondisclosure Agreement with Sol Systems.

Purchasing Division of Legal Department
INTEROFFICE MEMORANDUM



Stacy Nonhof, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR PROPOSAL
FOR
RENEWABLE ENERGY SOURCES**

RFP DUE DATE: July 7, 2016 at 2:15 p.m.

DEPARTMENT: Utilities

PUBLICATION DATE: May 31, 2016

NO. POTENTIAL BIDDERS: 8

SUMMARY OF PROPOSALS RECEIVED

Aksamit Resource Management, LLC
Houston, TX

Sempra U.S. Gas & Power
San Diego, CA

Renewable Energy Systems Americas, Inc.
Broomfield, CO

Lincoln Clean Energy
Chicago, IL

BHE Renewables
Des Moines, IA

Turning Point Energy
Denver, CO

Exelon Generation
Chicago, IL

Bluestem Sandhills, LLC
Valentine, NE

Innovative Solar
Holdrege, NE

Sol Systems, LLC
Washington, DC

Tradewind Energy
Lenexa, KS

Invenergy
Chicago, IL

NextEra Energy Resources
Juno Beach, FL

Geronimo Energy
Edina, MN

cc: Tim Luchsinger, Utilities Director
Marlan Ferguson, City Administrator
Stacy Nonhof, Purchasing Agent

Pat Gericke, Utilities Admin. Assist.
Renae Griffiths, Finance Director

P1888



Mutual Nondisclosure Agreement

This Mutual Nondisclosure Agreement (the "Agreement") is entered into by and between _____, a _____ ("Company"), and Sol Systems, LLC, a Delaware limited liability company ("Sol Systems"). Company and Sol Systems may be referred to herein individually as a "Party" or collectively as "the Parties."

The Parties are currently in discussion regarding the establishment of either a transaction or a relationship for the purposes of expanding upon or continuing their respective businesses (the "Business Relationship").

The Party (and its Representatives) providing Confidential Information (as defined below) shall be referred to herein as the "Disclosing Party", and the Party (and its Representatives) receiving Confidential Information shall be referred to herein as the "Receiving Party." "Representatives" means a Party's affiliates, officers, directors, shareholders, members, partners, financing sources, employees, agents, consultants and advisors (including, without limitation, financial advisors, counsel and accountants).

- 1. Definition of Confidential Information.** For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which either of the Parties is engaged. If Confidential Information is in written form, the Party shall label or stamp the materials with the word "Confidential" or some similar warning. If Confidential Information is transmitted orally, the Party shall promptly provide a writing indicating that such oral communication constituted Confidential Information.
- 2. Exclusions from Confidential Information.** Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.
- 3. Obligations of Receiving Party.** Receiving Party shall hold and maintain the Confidential Information in strictest confidence and shall not use such Confidential Information for any purpose except to evaluate and engage in discussions concerning the Business Relationship. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. Notwithstanding the foregoing, Sol Systems may, without Company's prior consent, disclose Confidential Information to potential investors, on an anonymous basis, for the sole and exclusive benefit of Company; *provided*, that such investor is subject to nondisclosure restrictions at least as protective as those in this Agreement. Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if Disclosing Party requests it in writing.
- 4. Permitted Disclosure.** Receiving Party may disclose Confidential Information to the extent required by applicable law, governmental regulation, rules or requirements of a self-regulatory agency, audits or investigations of books and records, court order, governmental decree or demand, interrogatories, subpoena, civil investigative demand or other legal process. If Receiving Party is required to disclose


Confidential Information pursuant to court order, governmental decree or demand, interrogatories, subpoena, civil investigative demand or other process, Receiving Party shall provide notice (to the extent practicable and not prohibited by law) to Disclosing Party of any such requirement. Receiving Party may also disclose such Confidential Information to the extent necessary to protect or enforce its rights and remedies hereunder. In addition, Receiving Party may disclose Confidential Information in the course of any general examination of its books and records by any bank, securities, tax or other regulatory authority having jurisdiction without giving notice thereof to Disclosing Party.

5. **Duration of Duty.** The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until two (2) years from the date of execution of this agreement or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.
6. **Injunctive Relief.** Receiving Party agrees that any unauthorized use or disclosure of Confidential Information in violation of this Agreement may cause irreparable injury for which money damages may not be a sufficient remedy. In the event Receiving Party breaches this Agreement, Disclosing Party shall be entitled to specific performance and injunctive relief or other equitable relief as a remedy for such breach, without the posting of a bond, in addition to any other remedies that may be available in law or equity. Notwithstanding the foregoing, Receiving Party shall not be held liable for any punitive, consequential, special or indirect damages.
7. **Notification.** Receiving Party will notify Disclosing Party in writing immediately upon the occurrence of any unauthorized release of Confidential Information or any breach of this Agreement of which it is actually aware.
8. **Relationships.** Nothing contained in this Agreement shall be deemed to constitute either Party a partner, joint venture or employee of the other Party for any purpose.
9. **Severability.** If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to effect the intent of the Parties.
10. **Integration.** This Agreement expresses the complete understanding of the Parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings. This Agreement may not be amended except in a writing signed by both Parties.
11. **Waiver.** The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights. This Agreement and each Party's obligations shall be binding on the representatives, assigns and successors of such Party. Each Party has signed this Agreement through its authorized representative.
12. **Choice of Law.** This Agreement will be governed by laws of the State of Nebraska without regard to its principles of conflicts of law, and the Parties hereby consent to the jurisdiction of the administrative and judicial tribunals of the State of Nebraska, as applicable.
13. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original for all purposes, and together shall constitute one and the same document.



IN WITNESS WHEREOF, the Parties have executed this Mutual Non-Disclosure Agreement as of the ____ day of _____, ____.

SOL SYSTEMS, LLC



Lauren Harris
Director, CES

Sol Systems, LLC

RESOLUTION 2017-163

WHEREAS, the Utilities Department has made efforts to be involved in developing technologies regarding renewable energy; and

WHEREAS, the use of fossil fuels for electricity production is coming under increasing scrutiny at the national level and more restrictions and regulations are likely to be placed upon fossil fuels, particularly coal; and

WHEREAS, on May 8, 2012, Council approved a resolution to direct the Utilities Department to evaluate potential renewable energy projects; and

WHEREAS, the City has entered into Power Purchase Agreements with developers for two wind projects for a total of 86 megawatts, or about 45 percent of Grand Island's annual energy requirements; and

WHEREAS, as part of a Request for Proposals issued last summer for renewable energy, the Utilities Department solicited wind projects along with solar projects that could be done on a pilot program basis; and

WHEREAS, the evaluation of the proposals resulted in the selection of Sol Systems as the most favorable respondent to the solar portion of the RFP; and

WHEREAS, in order for Sol Systems to discuss specific pricing information with the Utilities Department, a Mutual Non-Disclosure Agreement must be signed.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island enter into a Mutual Non-Disclosure Agreement with Sol Systems, and that the Mayor is designated to sign the Agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, June 13, 2017.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	▣ _____
June 9, 2017	▣ City Attorney