

City of Scottsbluff, Nebraska

Monday, May 2, 2016

Regular Meeting

Item Reports9

Council to consider the Lease Agreement with Scottsbluff Solar LLC for the community solar project and authorize the Mayor to execute the agreement.

Staff Contact: Nathan Johnson, Assistant City Manager

LEASE AGREEMENT

This lease is made and entered into this ____ day of April, 2016, by and between City of Scottsbluff, Nebraska, hereinafter referred to as Owner, and Scottsbluff Solar, LLC, a Nebraska Limited Liability Company, hereinafter referred to as Tenant.

RECITALS

City of Scottsbluff is purchasing the following described real estate from the Nebraska Public Power District:

Part of Block 1, Second Power Station Addition to the City of Scottsbluff, in Section 26, Township 22 North, Range 55 West of the 6th P.M. Scotts Bluff County, Nebraska,

hereinafter referred to as premises. The City of Scottsbluff has made the premises available for a community solar project that will sell power to the Nebraska Public Power District pursuant to a Purchase Power Agreement.

Tenant is installing solar panels within the community solar project on the described real estate owned by City of Scottsbluff

AGREEMENT

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Premises. Owner hereby leases to Tenant a suitable location for the installation of solar panels located on the following-described property, the premises:

Part of Block 1, Second Power Station Addition to the City of Scottsbluff, in Section 26, Township 22 North, Range 55 West of the 6th P.M. Scotts Bluff County, Nebraska,

on the following terms and conditions.

2. Term of Lease. This lease shall continue in effect for as long as tenant has functional solar panels remaining on the premises or is otherwise terminated as set forth in paragraph 14 herein.
3. Rent. Rent shall be one dollar receipt of which is hereby acknowledged.
4. Use of Premises. The premises are to be used for the purpose of installing solar panels which will be connected to the City utility grid for the City of Scottsbluff. Tenant shall restrict its use to such purposes, and shall not use or permit the use of the

premises for any other purpose without the written consent of Owner, or Owner's authorized agent.

5. Waste, Nuisance, or Unlawful Activity. Tenant shall not allow any waste or nuisance on the premises, or use or allow the premises to be used for any unlawful purpose.

6. Assignment and Sublease. Tenant will not assign or sublet the premises or any portion of the premises without the prior written consent of the Owner but such permission will not be unreasonably withheld.

7. Taxes. Tenant shall pay or cause to be paid promptly when due all taxes levied against personal property placed by Tenant in or about the premises. Owner shall pay all real estate taxes and assessments of every nature, kind and description levied and assessed against the premises.

8. Repairs and Maintenance. Tenant shall maintain its personal property on the premises and keep them in good repair at its expense.

9. Damage to Premises. Tenant is fully responsible for all damage to its personal property located on the premises.

10. Nonliability of Owner for Damages. Owner shall not be liable for liability or damage claims for injury to persons or property from any cause relating to the occupancy of the premises by Tenant. Tenant shall indemnify and hold Owner harmless from all liability, loss, or other damage claims or obligations resulting from any injuries or losses of this nature.

11. Insurance. Tenant agrees to procure and maintain continuously during the term of this lease, any insurance on the personal property that Tenant places on the property. Owner will maintain his own insurance coverage.

12. Waiver of Claims and Indemnity. All personal property on the premises shall be at risk of the Tenant, and Owner shall not be liable for any damages to said personal property, to Tenant or to any other person caused by water, wind, or by any negligence or act of other occupants or any other person or caused in any manner whatsoever except caused by Owner's negligence or breach of this lease.

13. Liability Insurance. Tenant shall procure and maintain in force at its expense during the term of this lease and any extension thereof any insurance necessary to cover the damage to its personal property placed on the premises.

14. Termination. This Lease Agreement may be terminated by the Owner in the event the Tenant:

- a. Is not awarded the REAP Grant.
- b. Acts with gross negligence or willful misconduct in connection with the performance of its responsibilities.
- c. Defaults in the performance of any of the duties set forth in this Lease Agreement.
- d. Acts against the best interests of the Owner in any material respect. and
- e. Upon 30 days written notice provided by the Owner.

15. Miscellaneous Provisions.

a. Owner may go onto the property at reasonable times without hindrance to make any repairs necessary for the proper preservation of the property or to go on said premises for any lawful purpose.

b. This lease will become null and void if the Tenant has not completed the required solar installation and entered into the purchase power agreement before the end of 2016 or if the Owner does not successfully complete the purchase of the premises.

c. It is agreed by the parties that tenant owns individual solar panels on the premises. Those panels are part of an array that is connected to the electrical grid for the City of Scottsbluff. Upon termination of the tenancy, Tenant shall have the right to have said equipment and fixtures returned to it and shall be responsible for its removal. Tenant shall not have the right to interrupt the operation of the solar array in the process.

d. All agreements, covenants and obligations contained in this lease shall be binding upon the heirs, personal representatives, successors, and assigns of the parties.

This lease contains the entire agreement between the parties and may be amended only by subsequent written agreement.

IN WITNESS WHEREOF, the parties have executed this document the day and year first written above.

City of Scottsbluff - Owner

Scottsbluff Solar, LLC -
Tenant

BY _____
Randy Meininger, Mayor

BY _____
Clifford F. Mesner,

President
of Mesner Solar Development Co. -
Managing Member

Attest: _____

STATE OF NEBRASKA :
: ss.
COUNTY OF SCOTTS BLUFF :

The foregoing instrument was acknowledged before me on April _____, 2016, by
Randy Meininger, Mayor of City of Scottsbluff as Owner.

Notary Public

STATE OF NEBRASKA :
: ss.
COUNTY OF MERRICK :

The foregoing instrument was acknowledged before me on April _____, 2016, by
Clifford F. Mesner, President of Mesner Solar Development Co., Managing Member of
Scottsbluff Solar, LLC, as Tenant.

Notary Public