

# **City of Scottsbluff, Nebraska**

**Monday, July 18, 2016**

**Regular Meeting**

## **Item Pub. Hear.2**

**Council to consider a Memorandum of Understanding with Nebraska Public Power District regarding the purchase of approximately 0.34 acres located in part of Block 1, Second Power Station Addition, Scottsbluff, NE for the purpose of building a solar array project.**

**Minutes: Following the Public Hearing, the Council will consider the MOU. The Purchase Agreement will be considered at a later date following the Phase 1 Environmental Assessment.**

**Staff Contact: Nathan Johnson, City Manager**

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING, is made by and between Nebraska Public Power District, a public corporation and political subdivision of the State of Nebraska, and the successor in interest to Consumers Public Power District, hereinafter referred to as "NPPD", and the City of Scottsbluff, Nebraska, a municipal corporation, hereinafter referred to as "City".

WHEREAS, NPPD is the owner of a tract of land located in the City of Scottsbluff, in Scotts Bluff County, Nebraska, described as follows: A tract of land which is approximately 0.34 acres located in Part of Block 1, Second Power Station Addition, in Section 26, Township 22 North, Range 55 West of the 6<sup>th</sup> P.M.; and

WHEREAS, City and Scottsbluff Solar LLC, are working together to build a solar array project in the City of Scottsbluff. Scottsbluff Solar LLC intends to apply for a REAP grant to USDA Rural Development to help finance the construction of the solar array; and

WHEREAS, subject to the terms and conditions contained herein, in the event that Scottsbluff Solar LLC notifies City that it has received the REAP grant, and/or is ready to build the solar array, NPPD agrees to offer to sell City the above-described tract of land so the solar array can be built by Scottsbluff Solar LLC.

NOW, THEREFORE, IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. City wants to perform an environmental study on the above-described parcel of land before City decides to purchase the land to build a solar array project, and NPPD agrees to pay for a Phase I Environmental Study of the parcel of land performed by Panhandle Geotechnical & Environmental in an amount not to exceed \$2,500.00.

2. In the event Panhandle Geotechnical & Environmental determines that a Phase II Environmental Study will be required, then NPPD, may in its sole discretion, determine that it will not be cost effective to build a solar array on NPPD's above-described parcel of land, and NPPD shall notify City that the above-described parcel of land is no longer offered for sale to City, and this Memorandum of Understanding shall become null and void.

3. Notwithstanding the provisions of Paragraph 2. above, in the event that a Phase II Environmental Study is not required by City, and in the event that Scottsbluff Solar LLC notifies City that they intend to proceed with the building of the solar array, NPPD agrees to offer to sell the above tract of land, and City agrees to purchase the tract of land and to execute an Agreement for the Sale of Real Estate, in accordance with terms and conditions similar to the Agreement for Sale of Real Estate attached hereto. City and NPPD agree to complete any negotiated terms that are not yet contained in the Agreement for Sale of Real Estate.

4. In the event the solar array is constructed, the power from the solar array will be sold exclusively to NPPD under a purchase power agreement.

5. In the event that the solar array project is not developed by City and Scottsbluff Solar LLC, and/or City no longer needs the real estate described above purchased from NPPD, City agrees to sell, and NPPD agrees to purchase the above described real estate at the same price that City pays NPPD for the purchase of the real estate.

IN WITNESS WHEREOF, the Parties have set their hands to this Memorandum of Understanding, the dates set out below.

NEBRASKA PUBLIC POWER DISTRICT

CITY OF SCOTTSBLUFF, NEBRASKA

By: \_\_\_\_\_  
Alan J. Beiermann

By: \_\_\_\_\_  
Randy Meininger

Title: Land Management Manager

Title: Mayor

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

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

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF PLATTE     )

Before me, a notary public qualified in said county, personally came Alan J. Beiermann, Land Management Manager, of Nebraska Public Power District, a corporation, known to me to be the officer and identical person who signed the foregoing instrument, and acknowledged the execution to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation.

Witness my hand and notarial seal on \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

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

Before me, a notary public qualified in said county, personally came Randy Meininger, Mayor of the City of Scottsbluff, Nebraska, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution to be his voluntary act and deed.

Witness my hand and notarial seal on \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

## AGREEMENT FOR SALE OF REAL ESTATE

THIS AGREEMENT FOR SALE OF REAL ESTATE, hereinafter referred to as Agreement, is made by and between NEBRASKA PUBLIC POWER DISTRICT, a public corporation and political subdivision of the State of Nebraska and the successor in interest to Consumers Public Power District, hereinafter referred to as SELLER, and the City of Scottsbluff, Nebraska, a municipal corporation, hereinafter referred to as BUYER.

### RECITALS:

SELLER is the owner of a tract of land, located in the City of Scottsbluff in Scotts Bluff County, Nebraska, and described as follows:

A TRACT OF LAND WHICH IS APPROXIMATELY 0.34 ACRES LOCATED IN PART OF BLK 1, SECOND POWER STATION ADD, IN SECTION 26, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6<sup>TH</sup> P.M. IN SCOTTS BLUFF COUNTY NEBRASKA, HEREINAFTER REFERRED TO AS PREMISES OR REAL ESTATE.

(NOTE: Final acreage and legal description of the property being purchased will be determined by a survey to be completed at a later date.)

SELLER has agreed to sell the real estate to BUYER, and BUYER has agreed to purchase the same from SELLER, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and the Parties intending to be legally bound hereby, it is agreed between the Parties as follows:

1. CONSIDERATION: BUYER shall pay SELLER as full consideration an amount to be negotiated and agreed upon by both parties before this Agreement is executed by the parties.

2. CLOSING: Closing shall be at such time and place as the Parties shall mutually agree upon. The closing is subject to the approval of the sale of the real estate to BUYER by SELLER'S Board of Directors.

3. TAXES: It is understood by the Parties that said real estate has not been subject to taxation and there are no taxes on said premises to be paid by SELLER.

4. WARRANTIES: BUYER retained Panhandle Geotechnical & Environmental to examine and complete a Phase I Environmental Study on the premises, and BUYER acknowledges that BUYER has inspected the premises, and acknowledges that BUYER is purchasing the same subject to those inspections and not by reason of any representation of SELLER. BUYER is buying the premises on an AS IS, WHERE IS basis, WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, OF ANY KIND WHATSOEVER BY SELLER.

5. POSSESSION: SELLER shall give BUYER quiet and peaceable possession of the premises on the date of closing. All risk of loss or damage to the premises being sold hereunder shall remain on SELLER until the time of closing, and shall pass to BUYER at the time of closing.

6. ASSIGNMENT: BUYER shall not have the right to assign, transfer or sell BUYER'S interest in this Agreement without first obtaining the consent, in writing, of SELLER.

7. TITLE: BUYER shall obtain a policy of the title insurance on the premises and the cost of such policy shall be divided equally between BUYER and SELLER. Such title insurance commitment shall show good and merchantable title in SELLER, free and clear of all liens and encumbrances, subject, however, to public highways, easements of record, apparent easements, and all governmental rules and regulations.

Written notice of any easement, restriction or other matter affecting title to the premises that is unacceptable to BUYER shall be delivered to SELLER within two weeks from receipt of the title commitment or updated title commitment. Seller shall have a reasonable period, not exceeding thirty days, to cure any easement, restriction, or other matter unacceptable to BUYER. In the event SELLER elects not to cure any easement, restriction, or other matter unacceptable to BUYER, BUYER may declare this Agreement null and void.

8. DEED: SELLER shall prepare and execute a Corporation Quitclaim Deed of conveyance to BUYER, free and clear of all encumbrances, subject, however, to public highways, easements of record, apparent easements, and all governmental rules and regulations, and deliver the same to BUYER on the date of closing upon payment of the purchase price in a simultaneous transaction.

9. SELLER'S RIGHT TO REPURCHASE LAND: Seller understands that the premises are being purchased by BUYER so that BUYER can work with Scottsbluff Solar LLC to build a solar array in the City of Scottsbluff, in Scotts Bluff County, Nebraska. In the event that the solar array project is not developed by BUYER and Scottsbluff Solar LLC, and/or the BUYER no longer needs the above-described premises for a solar array, BUYER agrees to take all reasonable steps to restore the land, as nearly as possible, to the condition the land was in prior to the City performing any grading or alterations to the said tract of land. BUYER also agrees that it will sell and SELLER agrees to purchase the premises from BUYER at the same price that BUYER purchased the land from Seller under the terms of this Agreement.

10. COSTS: BUYER and SELLER shall pay their own attorney fees incurred in this sale.

11. SURVEY: The real estate sold hereby will be surveyed and filed by NPPD at a later date.

12. ENVIRONMENTAL ASSESSMENT: Notwithstanding the completion of a Phase I Environmental Study, BUYER agrees and understands that the premises are being purchased "AS IS", and BUYER acquires from SELLER all action, rights of action and/or cause of action

and assumes all liabilities incidental to and pertaining to the premises which is the subject matter of this Agreement.

13. NOTICE: All notices required herein shall be in writing, and shall be mailed to the following addresses:

SELLER: NEBRASKA PUBLIC POWER DISTRICT  
Attn: Ron Starzec  
PO Box 499  
Columbus, NE 68602-0499

BUYER: CITY OF SCOTTSBLUFF  
Attn: Cindy Dickenson/City Clerk  
2525 Circle Drive  
Scottsbluff, Nebraska 69361

With respect to all notices mailed, the date of postmark shall control.

14. DEFAULT: In the event either Party should default under the terms and conditions to be performed by that Party pursuant to this Agreement, the other Party shall have such rights and remedies as are allowed by law, including the rights of specific performance. The election or forfeiture of any one remedy shall not bar the election or cause the forfeiture of any other remedy.

15. SURVIVAL: All terms, conditions, representations and warranties of SELLER and BUYER in this Agreement shall survive the date of closing.

16. SEVERABILITY: In the event any provision of this Agreement is determined to be invalid or unenforceable for any reason, such determination shall not affect the remainder of this Agreement.

17. BINDER: This Agreement shall be binding upon the successors, assigns and legal representatives of the Parties hereto.

18. ENTIRETY: This Agreement constitutes the entire Agreement between the Parties, and any other Agreements between the Parties, unless reduced to writing and executed by the Parties, shall be null and void.

IN WITNESS WHEREOF, the Parties have set their hands to this Agreement the dates set out below.

[SIGNATURE PAGE WILL FOLLOW]

SELLER:  
NEBRASKA PUBLIC POWER DISTRICT

By: \_\_\_\_\_  
Alan J. Beiermann

Title: Land Management Manager

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

BUYER:  
CITY OF SCOTTSBLUFF, NEBRASKA

By: \_\_\_\_\_  
Randy Meininger

Title: Mayor

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

STATE OF NEBRASKA        )  
COUNTY OF PLATTE        ) ss.

Before me, a notary public qualified in said county, personally came Alan J. Beiermann, Land Management Manager, of Nebraska Public Power District, a corporation, known to me to be the identical person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal on \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

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

Before me, a notary public qualified in said county, personally came Randy Meininger, Mayor of the City of Scottsbluff, Nebraska, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution to be his voluntary act and deed.

Witness my hand and notarial seal on \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public