

# **City of Scottsbluff, Nebraska**

**Monday, April 17, 2017**

**Regular Meeting**

## **Item Reports2**

**Council to consider the lease agreement with Venango Solar, LLC for the purpose of installing and maintaining solar panels for generation of electrical energy and authorize the Mayor to execute the agreement.**

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

## LEASE AGREEMENT

This Lease Agreement ("Lease") is made and entered into this \_\_\_\_ day of April, 2017, by and between City of Scottsbluff, Nebraska, a Nebraska municipal corporation ("Owner"), and Venango Solar, LLC, a Nebraska limited liability company ("Tenant").

### RECITALS

Owner owns the following described real estate:

A Tract of land being that portion of Block One, Second Power Station Addition to the City of Scottsbluff, Scotts Bluff County, Nebraska, described as: Commencing at the Northwest corner of Block One, Second Power Station addition, thence bearing S01°48'53"W, an assumed bearing on the West line of said Block One, a distance of 630.91 feet, to the point of intersection with the North line of an excepted right of way tract as described in Deed Book 144, Page 524, thence bearing S86°57'49"E, on the North line of said tract, a distance of 55.47 feet to the Northeast corner of said tract, thence bearing S02°10'11"W, on the East line of said tract, a distance of 7.88 feet, to the point of intersection with the South line of Block One, Second Power Station Addition, thence bearing S87°53'49"E, on said South line, a distance of 48.42 feet, to the point of beginning, thence bearing N02°29'44"E, a distance of 213.57 feet, thence bearing S48°04'20"E, a distance of 91.38 feet, thence bearing N41°03'22"E, a distance of 10.80 feet, thence bearing S48°30'48"E, a distance of 209.88 feet, thence bearing S02°37'28"W, a distance of 30.27 feet, to the point of intersection with the South line of Block One, Second Power Station Addition, thence on said South line, bearing N87°53'49"W, a distance of 240.38 feet, to the point of beginning, said tract containing an area of 0.68 acres, more or less; ("premises").

The Owner has made the premises available for a community solar project that will sell power to the Nebraska Public Power District pursuant to a Power Purchase Agreement.

Tenant has installed solar panels on the premises for generation of electrical energy to sell to the Nebraska Public Power District and sell to the Owner's citizens.

### AGREEMENT

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

1. Premises. Owner leases to Tenant the premises identified above for the installation of solar panels on the following terms and conditions.
2. Term of Lease. This Lease shall be for a term of twenty (20) years. Thereafter, this Lease shall continue in effect on a year to year term for as long as Tenant has functional solar

panels on the premises and also maintains a current and active Power Purchase Agreement with the Nebraska Public Power District or is otherwise terminated as set forth in paragraph 13 of this Lease.

3. Rent. Rent shall be one dollar per year receipt of which is acknowledged by Owner.

4. Use of Premises. The premises shall be used for the purpose of installing solar panels which will be connected to the Owner's utility grid. 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 prior written consent of Owner.

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 on 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 sole 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 any 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 any nature.

11. Insurance. Tenant agrees to procure and maintain continuously during the any term of this Lease, insurance on the personal property that Tenant places on the property which will include liability insurance protection naming the Owner as a co-insured. Certificates of insurance showing Tenant has the required insurance shall be provided to the Owner upon Owner's request. The certificates will provide not less than ten (10) days prior written notice of cancellation or material change of terms of the policy. All such certificates shall name the Owner as an additional insured. Owner will maintain its own insurance coverage for the premises, only.

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 any other peril 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. Termination. This Lease may be terminated by the Owner in the event the Tenant:

- a. Acts with gross negligence or willful misconduct in connection with the performance of its responsibilities;
- b. Defaults in the performance of any of the duties set forth in this Lease;
- c. Acts against the best interests of the Owner in any material respect; and

Termination of this Lease will automatically occur following a thirty (30) day written notice sent by the Owner to Tenant. At the time of termination Tenant agrees to peacefully surrender the premises and to remove its personal property from the premises.

14. Miscellaneous Provisions.

- a. Owner may go onto the premises at reasonable times without hindrance to make any repairs necessary for the proper preservation of the premises 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 a Purchase Power Agreement with Nebraska Public Power District before the end of 2017.
- c. It is agreed by the parties that Tenant owns individual solar panels on the premises. Those panels are part of an array that will be connected to the electrical grid for the Owner. Upon termination of the Lease, Tenant shall be responsible for the removal of all equipment and fixtures located on the premises and surrender the premises in the same or similar condition as it was in prior to this Lease, subject to reasonable use and natural deterioration. 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

Venango Solar, LLC - Tenant

BY \_\_\_\_\_  
Randy Meininger, Mayor

BY \_\_\_\_\_  
Clifford F. Mesner, Managing Member

Attest: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me on April \_\_\_\_, 2017, 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 \_\_\_\_\_, 2017, by Clifford F. Mesner, Managing Member of Venango Solar, LLC, as Tenant.

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