

City of Scottsbluff, Nebraska

Tuesday, February 19, 2019

Regular Meeting

Item Reports4

Council to consider approving the Community Solar Project Agreement for Scottsbluff Solar II and authorize the Mayor to execute the Agreement.

Staff Contact: Nathan Johnson, City Manager

**COMMUNITY SOLAR PROJECT AGREEMENT FOR
SCOTTSBLUFF SOLAR II**

Between

NEBRASKA PUBLIC POWER DISTRICT

And

CITY OF SCOTTSBLUFF, NEBRASKA

Effective: _____, 2019

Community Solar Project Agreement for Scottsbluff Solar II

Between

Nebraska Public Power District

And

City of Scottsbluff, Nebraska

This Community Solar Project Agreement for Scottsbluff Solar II (Agreement) is made and entered into effective the ____ day of _____, 2019, by and between Nebraska Public Power District, a public corporation and political subdivision of the State of Nebraska (NPPD), and the City of Scottsbluff, a municipal corporation of the State of Nebraska (City), each sometimes hereinafter referred to singularly as "Party" and collectively as "Parties."

RECITALS

WHEREAS, NPPD operates an integrated electric utility system, including facilities for generation, transmission and distribution of electric power and energy at wholesale and retail, and is engaged in generation, transmission, distribution, and sale of electric power and energy; and

WHEREAS, the City owns an electric distribution system which is directly or indirectly connected to NPPD's integrated utility electric system; and

WHEREAS, NPPD and City previously entered into a Professional Retail Operations Agreement dated December 3, 2018 (PRO Agreement), which provides, among other things, for NPPD's lease and operation of City's distribution system; and

WHEREAS, City has, by way of a letter of intent, expressed its desire to participate in a second Community Solar Project with NPPD; and

WHEREAS, NPPD and City desire to enter into this Agreement to set forth certain terms and provisions required for the administration and implementation of said second Community Solar Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1. Community Solar Project (a second project known as Scottsbluff Solar II) shall mean the community solar generation project located on a 27-acre parcel (located near the intersection of East 42nd Street and County Road 22) owned by the City and serving participants who are served at retail by NPPD within the City.
2. Community Solar Energy Rider shall mean the NPPD approved Community Solar Energy Rider Rate Schedule for communities served at retail by NPPD, and as the same may be amended from time to time.
3. Base Energy Credit shall mean as the same is defined in the Community Solar Energy Rider.
4. Solar Energy Charge shall mean as the same is defined in the Community Solar Energy Rider.
5. Power Purchase Agreement (PPA) shall mean the PPA between NPPD and Sol Systems, LLC (Sol Systems), pursuant to which NPPD purchases the output of the solar generation facility which is included in the Community Solar Project.

ARTICLE II

TERM AND EFFECTIVE DATE

This Agreement shall become effective on the date first above written and shall have a term of 25 years.

ARTICLE III

DEVELOPMENT OF COMMUNITY SOLAR PROJECT

City has expressed its intent to NPPD to pursue the development of a Community Solar Project with the understanding that portions of the energy output (also referred to as solar energy shares) from said Community Solar Project would be made available for sale by NPPD to end-use customers served by NPPD from the City's distribution system as defined in the PRO Agreement or any extension or replacement thereof.

In accordance with the City's expressed intentions, NPPD has (or will have) entered into the PPA for purchase by NPPD of the energy output from the Community Solar Project. Additionally, NPPD will enter into service agreements with the end-use customers, served by NPPD from the City's distribution system, who desire to purchase solar energy shares, in accordance with the terms set forth in NPPD's Community Solar Energy Rider.

ARTICLE IV
CITY'S OPTION TO PURCHASE SOLAR ENERGY SHARES

NPPD and City agree that all energy sold to NPPD under the PPA is intended to be resold as solar energy shares to end-use customers served from the City's distribution system; provided, however, if NPPD determines that solar energy shares are available for purchase by the City, the City shall have the option to purchase such available solar energy shares and apply the purchased solar energy shares to the City's eligible electric service accounts served by NPPD, as said accounts are identified in Exhibit A.

ARTICLE V
CITY'S PAYMENT OBLIGATION

If in any month less than one hundred percent (100%) of the solar energy shares made available from the Community Solar Project are purchased by end-use customers served by NPPD within the City, or purchased by the City in accordance with Article IV above, the City shall pay NPPD for any such solar energy shares which were not purchased in said month, to compensate NPPD for its payment obligations in purchasing energy under the PPA. The payment owed by City to NPPD, if any, shall be calculated by multiplying the number of unsold solar energy shares in such month by the difference between the Base Energy Credit (in cents per kWh) and the purchase price paid by NPPD (in cents per kWh) under the PPA.

If the PPA provides to NPPD the option to purchase and own the solar generation facilities, and if NPPD exercises said option and acquires and owns the solar generation facilities, the purchase price to be paid by NPPD (in cents per kWh), as was set forth in the PPA, shall continue to be utilized to calculate the City's payment obligation, if any, under this Article V.

If for any month the City has an obligation to make payment to NPPD pursuant to this Article V, the amount of such payment owed by the City shall be included as a separate line item on NPPD's invoice to the City for electric service provided by NPPD.

ARTICLE VI
CONDITIONS AND REQUIREMENTS

The effectiveness of this Agreement and NPPD's concurrence to work jointly with the City for development of the Community Solar Project shall be conditioned upon completion and/or effectiveness of the following:

1. The PPA between NPPD and Sol Systems shall have been entered into.
2. The City must maintain the PRO Agreement, or its replacement, in place during the term of the PPA or any extension thereof.

ARTICLE VII
FAILURE TO HAVE A PROFESSIONAL RETAIL OPERATIONS
AGREEMENT IN FORCE

The City agrees that in the event it fails to keep the PRO Agreement in force with NPPD during the original term of the PPA (or any extension or replacement thereof) as provided in Article VI, that upon the termination of the PRO Agreement, or any replacement thereof, NPPD's obligation to provide retail service in accordance with this Agreement ends and that the City will hold harmless NPPD (and its customers not served by NPPD under the PRO Agreement) from any and all costs incurred by NPPD under the PPA (or incurred by NPPD if NPPD has acquired and owns the solar generation facilities). The City:

1. Agrees to accept NPPD's assignment of the PPA (subject to Sol Systems' approval) and to assume all of NPPD's duties and obligations thereunder, including, but not limited to, NPPD's obligations to make payments under the PPA; or
2. Agrees to purchase from NPPD the solar energy output from the Community Solar Project at the same cost incurred by NPPD under the terms and conditions of the PPA (including, but not limited to, the PPA's original term); this obligation shall apply whether the PPA is still in force or if NPPD has acquired and owns the solar generation facilities.

ARTICLE VIII
FIRST RIGHT OF REFUSAL

If NPPD acquires the solar generation facilities and no longer serves the City under the PRO Agreement, or its replacement, the City shall have a first right of refusal to purchase the solar generation facilities from NPPD. If the City purchases the facilities by exercising this right, the obligations under Article VII shall become null and void and of no force and effect after the date of the transfer of the facilities to the City by NPPD.

ARTICLE IX
SUCCESSORS AND ASSIGNS

Neither Party may assign this Agreement in whole or in part, or any rights granted hereunder, or delegate to a third party any of the duties or obligations hereunder, without the prior written consent of the other Party. In the event that either one or all NPPD generation assets, wholesale power marketing and/or retail operations functions are merged into or become part of another public power entity, such prior written consent shall not be required for the assignment by NPPD to its successor(s) in interest. No assignment of this Agreement shall be effective unless and until the assignee assumes in writing the duties and obligations of the assignor.

ARTICLE X
AMENDMENTS

Neither this Agreement nor any part hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification is sought.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and effective the day and year first above written.

CITY OF SCOTTSBLUFF, NEBRASKA NEBRASKA PUBLIC POWER DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____