

City of Seward, NE

Tuesday, June 16, 2015

Regular Session

Item G7

CONSIDERATION OF A DEVELOPER'S AGREEMENT WITH BLUESTEM ENERGY SOLUTIONS ON RENEWABLE ENERGY OPTIONS- Adam Herink

Administrative Report: Bluestem Energy presented information on renewable energy options to the City Council during the May 5, 2015 City Council meeting. Information was presented on wind generators and solar energy. No action was taken at this meeting.

Bluestem Energy Solutions is presenting a developer's agreement to investigate and facilitate energy options.

Following review and discussion, Council to consider approving said agreement.

Staff Contact:

EXCLUSIVE CONTINGENT DEVELOPMENT AGREEMENT

This Exclusive Contingent Development Agreement ("**Agreement**") is entered into as of _____ by and between Bluestem Energy Solutions, LLC, a Nebraska limited liability company ("**Developer**"), and the _____ of _____, Nebraska, a Nebraska municipal corporation ("**Purchaser**").

RECITALS

- A. Developer is an experienced developer, owner and operator of renewable energy generating facilities, including those using wind as a fuel source.
- B. Purchaser is a Nebraska electric provider that purchases energy at wholesale from one or more suppliers of energy. Purchaser's governing body has adopted a resolution of intent to purchase energy from renewable sources as a benefit to Purchaser's residents and businesses.
- C. Purchaser desires to supplement or replace a portion of its current wholesale energy purchase and to contract with Developer for Developer to engage in pre-development and development activities, and to enter into a binding, long-term power purchase agreement ("**PPA**") with Developer under which Developer would sell and Purchaser would buy electrical output of a wind energy generation facility at an economically reasonable price based on current energy costs, internal savings, portfolio diversification, non-monetary benefits, and market conditions (the "**Project**").
- D. The Development Period (as defined below), and Developer's activities therein are, in part, intended to assist Developer and Purchaser in determining an appropriate PPA price.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which Developer and Purchaser accept and acknowledge, Developer and Purchaser agree as follows:

1. **Exclusivity and Term.** Unless this Agreement is terminated, as provided for herein, for a period of two (2) years from the date first written above (the "**Development Period**"), Purchaser shall not engage, work with, contract, procure services from or otherwise do business with a developer of renewable energy generation facilities other than Developer. Purchaser and Developer may extend the Development Period by written agreement executed by Purchaser and Developer.
2. **Development Payment.** Within fifteen (15) days of the date first written above, Purchaser shall pay Developer zero dollars (\$00.00) for Developer's services under this Agreement (the "**Development Fund**").
3. **Development Obligation.** During the Development Period, at its sole cost and expense, Developer shall diligently undertake all necessary actions to investigate and facilitate the potential development of the Project in a manner intended to lead to Developer offering to sell

the energy the Project produces to Purchaser, and Purchaser agreeing to purchase such energy via a mutual, binding PPA (the "**Development Activities**"). The Development Activities may include, but shall not be limited to, those activities set forth in Exhibit A.

4. **Power Purchase Agreement.** Prior to the expiration of the Development Period, Developer and Purchaser shall meet and confer as necessary to negotiate in good faith a PPA. Developer and Purchaser represent and warrant that by entering into this Agreement, they desire in good faith that it result in the execution of a PPA between Developer and Purchaser for the Project. The PPA shall include Developer returning the Development Fund to Purchaser. If Purchaser rejects PPA prices and terms that reflect comparable prices and terms at the time of negotiation, Purchaser shall be subject to the Early Termination provisions below. If Purchaser and Developer execute a PPA for the Project, this Agreement shall terminate.

5. **Expiration and Termination.** If Developer and Purchaser have negotiated in good faith but are unable to agree on and execute a PPA prior to the end of the Development Period, Purchaser shall reimburse Developer for Developer's out-of-pocket expenditures on the Project during the Development Period (the "**Purchaser Termination Payment**"). This payment will not exceed an amount of _____ dollars (\$00)

6. **Early Termination.** If at any time prior to the expiration of the Development Period Purchaser desires to terminate this Agreement ("**Early Termination**"), Purchaser may do so, provided, however, that Purchaser must first pay the Purchaser Termination Payment plus an additional amount equal to ten percent (10%) of the Purchaser Termination Payment (the "**Early Termination Payment**").

7. **Release and Transfer of Assets.** Upon receiving the Purchaser Termination Payment or the Early Termination Payment, as applicable, Developer and Purchaser shall execute a written release from this Agreement (the "**Release**"), this Agreement shall terminate, and Developer and Purchaser shall have no further rights or obligations to one another as to the Project. The Release shall include all necessary documents, including but not limited to, bill(s) of sale, assignment(s), release(s) and deed(s), to transfer all of Developer's right, title and interest in and to the Project to Purchaser. The preceding sentence shall survive termination of this Agreement.

8. **Purchaser Warranties.**

a. Purchaser represents and warrants that Purchaser has taken all required actions and given all required notices and has requisite authority to enter into and bind itself to all of its obligations under this Agreement.

b. Purchaser represents and warrants that in entering into and binding itself to all of its obligations under this Agreement, Purchaser is not placing itself in breach or default of any agreement, contract, warrant or other binding legal obligation(s).

c. Purchaser represents and warrants that the individual executing this Agreement on its behalf is duly authorized to, and capable of, binding Purchaser to all of its obligations under this Agreement.

d. Purchaser represents and warrants that it will cooperate with Developer as necessary to assist Developer in carrying out its obligations under this Agreement, including, but not limited to, executing documents, attending meetings, and taking other actions to ensure the Project can occur within the existing framework of Purchaser's existing wholesale energy purchase contracts and arrangements.

9. **Confidentiality.** "**Confidential Information**" shall mean any information relating to, or contained or disclosed within, any contract, technical report, specification, meeting, or communication regarding the Project. Purchaser and Developer agree to maintain the confidentiality of any Confidential Information that becomes known to Purchaser or Developer during the course of this Agreement, including during and following the development and construction of the Project, provided, however, that Developer may disclose Confidential Information to third parties as necessary to carry out its obligations under this Agreement, and Purchaser may disclose Confidential Information as the Nebraska Public Records Law (Neb. Rev. Stats. §§ 84-712 – 84-712.09), may require, subject to obtaining confidentiality agreements from such third parties where possible.

10. **Construction and Enforcement.** This Agreement shall be construed and enforced pursuant to Nebraska law. This Agreement shall be construed as if drafted by both parties.

11. **Invalidity.** If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

12. **No Other Agreement.** This Agreement constitutes the sole and only agreement between Purchaser and Developer with respect to the Project and supersedes any prior understandings or written or oral agreements between Purchaser and Developer respecting the within subject matter and cannot be changed except by their written consent. Purchaser and Developer enter into this agreement at their own risk, and neither party shall have any obligation or liability to the other party except as expressly set forth in this Agreement.

13. **Time of the Essence.** Time is of the essence regarding the parties performance under this Agreement.

14. **Compliance with Laws.** Purchaser and Developer is solely responsible for its compliance with applicable laws, rules, and regulations regarding procurement, contracting, and execution of its obligations under this Agreement.

15. **No Partnership.** Nothing herein shall be construed to create a general partnership or authorize Purchaser or Developer to act as agent for the other.

16. **Assignment.** Any assignment of this Agreement by Purchaser or Developer to a non-affiliated entity may only occur with the written consent of the non-assigning party and any such assignment made without said consent shall be void and of no legal effect, provided,

however, that Developer may assign some or all of its rights and obligations under this Agreement to its affiliated entities without Purchaser's consent.

17. **Notices.** Notices pursuant to this Agreement shall be given to Purchaser at _____ and to Developer at Bluestem Energy Solutions, LLC, Attn: Mr. Adam Herink, 4361 Lafayette Avenue, Omaha, Nebraska, 68131.

18. **Counterparts.** This Agreement may be executed in counterparts, which when assembled such that the authorized signature of each of Purchaser and Developer is present, shall constitute an original of this Agreement.

Signatures on Following Page

DEVELOPER

Bluestem Energy Solutions, LLC

By: _____

Its: _____

PURCHASER

By: _____

Its: _____

Attest: _____

Title: _____

EXHIBIT A
DEVELOPMENT ACTIVITIES

- Environmental assessment
- Wind resource assessment
- Site identification and acquisition (lease or purchase)
- Interconnection studies
- Constructability review
- Engineering review
- Governmental permitting
- Aeronautic analysis
- Equipment procurement
- Distribution systems study
- PPA preparation
- Generator Interconnection Agreement preparation
- Title and survey review
- Financing preparation

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