6T

Memorandum

To: City Council

From: Clay Wilfahrt, City of Big Lake City Administrator

Date: December 14, 2016

Re: Solar Lease Amendment

When the City annexed land south of town to allow development of a solar garden, it included language regarding the Township's request to have the developer follow the decommissioning requirements of the County. NRG, the company who has taken ownership of the solar garden, has requested that the lease agreement reflect this to maintain consistency. NRG requested a few other changes to the document as well regarding language that are mostly legal in nature.

Staff has reviewed this and found it satisfactory. The City Attorney is reviewing and staff will report on his review at the meeting.

By approving this item on the Consent Agenda, Council would be approving first amendment to Solar Energy Facility Lease and Easement Agreement contingent upon City Attorney review and approval.

FIRST AMENDMENT TO
SOLAR ENERGY FACILITY LEASE
AND EASEMENT AGREEMENT

THIS FIRST AMENDMENT to Solar Energy Facility Lease and Easement Agreement (this "Amendment") is entered into as of December 14, 2016, by and between City of Big Lake, a municipal corporation (the "Lessor"), and Big Lake Holdco LLC, a Delaware limited liability company ("Tenant").

RECITALS

WHEREAS, Lessor and Tenant (as assignee of SolarStone Partners, LLC under that certain Assignment and Assumption Agreement (the "Assignment') between Tenant and SolarStone Partners, LLC, dated August 15, 2015) are parties to that certain Solar Energy Facility Lease and Easement Agreement, dated July 22, 2015 (the "Lease").

WHEREAS, Lessor and Tenant desire to amend certain terms of the Lease, as set forth in this Amendment.

AGREEMENT

NOW THEREFORE, for and in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Tenant agree that the Lease is hereby amended as follows:

1. The Lease is hereby amended by deleting "City of Big Lake" and replacing it with "City of Big Lake, a municipal corporation".

2. PART I – SUMMARY OF LEASE TERMS AND DEFINITIONS of the Lease is hereby amended as follows:

    a. The definition of "Land" is hereby deleted in its entirety and replaced with the following:

        Land: All of the land owned by the Lessor, consisting of approximately 26.63 acres as legally described on Exhibit A.

    b. The definition of "Premises" is hereby deleted in its entirety and replaced with the following:

        Premises: Land (the terms "Premises" and "Land" are used interchangeably in this Lease)

3. Section 1.2 of the Lease is hereby amended as follows, with bold and underlined words added:

    Access Easement. Lessor grants to Tenant an easement over, across, on and through the Premises and real property described in Exhibit "C" attached hereto and made part hereof and shown on Exhibit "B" ("Access Easement"), for ingress and egress to the Solar Facilities, by means of any existing roads or lanes, or by such route or routes as Tenant may construct from time to time. The easement rights granted herein shall include the right to improve existing roads and lanes, or to build new roads. The location and dimension of such access roads within the Premises and Access Easement shall be determined by Tenant in Tenant's sole discretion.

4. Section 1.3 of the Lease is hereby amended as follows, with bold and underlined words added:

   Transmission Easement. Lessor hereby grants to Tenant an easement over, across, on and through the Premises **and real property described in Exhibit "C"** for the placement and operation of transmission, distribution and/or communication equipment (including but not limited to underground or overhead transmission, collection, distribution and/or communication lines, transformers, substations and other equipment required for the transmission, collection or distribution of electric power and/or communications to or from the Solar Facilities), over and across the Premises. The location and dimension of such transmission, distribution or communication facilities within the Premises shall be determined by Tenant in Tenant's sole discretion.

5. Section 4.5 of the Lease is hereby amended as follows, with struck-through words deleted and bold and underlined words added:

   Tenant shall obtain and maintain in force policies of insurance covering the Solar Facilities and Tenant's activities on the Premises at all times during the Term, including specifically ~~comprehensive~~ **commercial** general liability insurance with a minimum ~~combined occurrence and annual limitation~~ **occurrence limit and annual aggregate** that is the greater of (i) $1,000,000; or (ii) the amount required by industry standards, financing requirements, or utility industry requirements, provided that such amount may be provided as part of a blanket policy covering other properties, and shall name Lessor as an additional insured thereon. Tenant shall provide Lessor with certificates of insurance to Lessor in advance of its taking possession of the Premises, and shall provide confirming certificates of insurance to Lessor throughout the Term.

6. Section 4.6 of the Lease is hereby amended by deleting the first word in the paragraph "Commencing" and replacing it with "Unless otherwise required by a governmental entity, commencing".

7. Section 4.6 of the Lease is hereby deleted in its entirety and replaced with the following:

   Within 180 days after the expiration or earlier termination of the Term of this Agreement, Tenant shall remove all Solar Facilities from the Premises. If Tenant fails to remove any of the Solar Facilities within the required time period, such Solar Facilities remaining on the Premises shall be considered abandoned by Tenant and Lessor may remove such Solar Facilities from the Premises and dispose of them in its sole discretion without notice or liability to Tenant and Tenant shall be liable for all cost incurred by Lessor in removing and disposing of the remaining Solar Facilities.

   The Security shall conform to the following requirements, as further detailed in **Exhibit E.** The Security shall be in the amount of $125,000. Twenty-five percent (25%) of the Security shall be in the form of a cash escrow and seventy-five percent (75%) shall be in the form of a letter of credit. On December 31, 2016, December 31, 2017, December 31, 2018 and December 31, 2019, the cash escrow shall be increased by an additional six and one quarter percent (6.25%) of the total Security and the letter of credit shall be decreased in an equal amount, so that on and after January 1, 2020, fifty percent (50%) of the Security shall be in the form of a cash escrow and fifty percent (50%) of the Security shall be in the form of a letter of credit.

8. Section 5.2 of the Lease is hereby amended as follows, with struck-through words deleted and bold and underlined words added:

Quiet Enjoyment. As long as Tenant is not in default hereunder, Tenant shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and Access Easement and any grant of rights Lessor makes to any other person relating to the Premises, if any, shall not interfere with any of Tenant's activities on the Premises pursuant to the terms of this Agreement. Lessor shall not interfere with the **Tenant's** ~~Lessor's~~ ability to convert insolation to electric energy or otherwise engage in activities which might impede or decrease the output or efficiency of the Solar Facilities.

9. Section 7.1 of the Lease is hereby amended by adding the following new Sections 7.1(c), (d) and (e):

(c) Notwithstanding anything herein to the contrary, Tenant may collaterally assign this Agreement and the Solar Facilities to any mortgagees or holders of security interests, including their successors or assigns (hereinafter collectively referred to as "**Secured Parties**"), without the need for consent from Lessor. Upon receipt of notice of the name and address of the Secured Parties, Lessor agrees to deliver any notices of default to the Secured Parties simultaneously with the delivery of such notices of default to Tenant. The Secured Parties will have the right to cure any defaults or breaches by Tenant within the time periods provided hereunder for Lessee plus an additional sixty (60) days in the case of an Event of Default under Section 9, and in order to succeed to the rights and obligations of Tenant under this Agreement shall not be required to cure any defaults by Tenant that by their nature are not capable of being cured by the Secured Parties. Any such notices to Secured Parties shall be sent to the Secured Parties at the address specified in writing to Lessor by Tenant or any Secured Party. Failure by Lessor to give a Secured Party such notice shall not diminish the Secured Party's rights against Tenant, but shall preserve all rights of the Secured Party to cure any default and to remove any property of Tenant located on the Premises.

(d) If Lessor has been notified of the existence of Secured Parties, Lessor will not agree to any amendment, modification or voluntary termination of this Agreement without the prior written consent of the Secured Parties. Upon receipt of a written request from any Secured Party, Lessor shall make any and all payments due and owing by Lessor under this Agreement to an account designated by the Secured Party, and Tenant agrees that such payment by Lessor will fully satisfy Lessor's payment obligations with respect to this Agreement to the extent of such payment. Lessor agrees that, upon foreclosure (or assignment in lieu of foreclosure) of its mortgage or security interest in the Solar Facilities, the Secured Party may succeed to the rights and obligations of Tenant under this Agreement. The Secured Party will be responsible for performance of Tenant's obligations after it succeeds to Tenant's interests under this Agreement, but shall have no further liability hereunder after it assigns such interests to a third party.

(e) If this Agreement is rejected or disaffirmed by Tenant pursuant to bankruptcy law or other law affecting creditor's rights and within ninety (90) days after such event any Secured Party shall have arranged to the reasonable satisfaction of Lessor for performance of Tenant's obligations under this Agreement, then Lessor shall execute and deliver to such Secured Party or to a designee of such Secured Party a new lease which (i) shall be for a term equal to the remainder of the Term before giving effect to such rejection or termination; and (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement. The provisions of this Section 7 shall survive the termination, rejection or disaffirmation of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 7 were a separate and independent contract made by Lessor, Tenant and each Secured Party. Tenant's Secured Parties shall be express third party beneficiaries of this Section 7.

10. Section 10.10 Lease is hereby amended as follows, with bold and underlined words added:

    Memorandum of Agreement: Upon Tenant's request, Lessor and Tenant agree to execute a memorandum of this Agreement in the form attached hereto as **Exhibit D** ~~Exhibit C~~. Lessor consents to the recordation of a memorandum of this Agreement and further consents to the recordation of an assignment of any interest.

11. Exhibit A of the Lease is hereby amended by deleting the original Exhibit A in its entirety and substituting therefore Exhibit A-1 attached to this Amendment.

12. Exhibit D is hereby amended by deleting the original Exhibit D in its entirety and substituting therefore Exhibit D attached to this Amendment.

13. The Lease is hereby amended by adding as Exhibit E, the Exhibit E attached to this Amendment.

14. Estoppel Certificate. Each Party agrees that at any time within fifteen (15) days following written notice from the other Party, it will execute, acknowledge and deliver to the requesting Party or any proposed mortgagee or purchaser a statement in writing certifying whether this Lease is in full force and effect and, if it is in full force and effect, what modifications have been made to the date of the certificates and whether or not any defaults or offsets exist with respect to this Lease and, if there are, what they are claimed to be and setting forth dates to which rent or other charges have been paid in advance, if any, and stating whether or not to other Party's knowledge the requesting Party is in default, and if so, specifying what the default may be, and certifying such other matters as the requesting Party may reasonably request.

15. Estoppel and Ratification. The Parties acknowledge and confirm that the Lease is in full force and effect and that no defaults exist under the Lease. All terms and conditions of the Lease, as amended by this Amendment, are hereby ratified and confirmed and shall be and remain in full force and effect.

16. Assignment. For the avoidance of doubt, Lessor hereby confirms its consent to the Assignment.

17. Entire Agreement. There are no oral agreements among the Parties hereto affecting this Amendment, this Amendment contains all of the terms, covenants, conditions, representations, warranties and agreements of the Parties relating in any manner to the subject matter hereof, and this Amendment supersedes and cancels any and all previous negotiations, arrangements, representations, warranties, agreements and understandings, if any, among the Parties hereto relating in any manner to the subject matter hereof.

18. Effectiveness. Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain in full force and effect.

19. Conflict of Terms. In the event of any conflict between the Lease and this Amendment, the terms and conditions of this Amendment shall prevail.

20. Miscellaneous. This Amendment may not be amended, nor any provision hereof waived, except in writing by the Parties hereto. This Amendment shall inure to the benefit of and shall be binding upon each of the Parties hereto, and their respective permitted successors in interest and assigns.

21. Counterparts. This Amendment may be executed in any number of counterparts. Any such counterpart, when executed, shall constitute an original of this Amendment, and all such counterparts together shall constitute one and the same Amendment. Delivery of an executed counterpart of a signature page of this Amendment by electronic means of delivery, including portable document format ("pdf"), shall be effective as delivery of a manually executed counterpart of this Amendment.

22. Authority. Each of the individuals executing this Amendment on behalf of a Party individually represents and warrants that he or she has been authorized to do so and has the power to bind the party for whom they are signing.

[Signatures on following page]

IN WITNESS WHEREOF, Owner and Tenant have caused this Amendment to be executed as of the date first written above.

LESSOR:

CITY OF BIG LAKE

By: _____
Its: Mayor

LESSEE:

BIG LAKE HOLDCO LLC

By: _____
Name: _____
Its: _____

SOLAR ENERGY FACILITY
LEASE AND EASEMENT AGREEMENT

Exhibit A

Legal Description of the Land

The North 1509.65 feet of the West Half of the Southwest Quarter of Section 25, Township 33, Range 28, Sherburne County, Minnesota lying East of a line drawn from a point on the North line of said West Half of the Southwest Quarter distant 862.58 feet West of the Northeast corner of said West Half of the Southwest Quarter to a point on the South line of said West Half of the Southwest Quarter distant 873.18 feet West of the Southeast corner of said West Half of the Southwest Quarter, EXCEPT that part of the North 1509.65 feet of the West Half of the Southwest Quarter of Section 25, Township 33, Range 28, Sherburne County, Minnesota which lies westerly of the West line of the East 768.30 feet, as measured at a right angle from the East line thereof, of said West Half of the Southwest Quarter and which lies easterly of a line drawn from a point on the North line of said West Half of the Southwest Quarter distant 862.58 feet West of the Northeast corner of said West Half of the Southwest Quarter to a point on the South line of said West Half of the Southwest Quarter distant 873.18 feet West of the Southeast corner of said West Half of the Southwest Quarter.

SOLAR ENERGY FACILITY
LEASE AND EASEMENT AGREEMENT

Exhibit D

Form of Memorandum of Agreement

This instrument was prepared by:

Steven B. Mayeron
Stinson Leonard Street, LLP
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
(612) 335-1502

(space above reserved for recorder)

MEMORANDUM OF
SOLAR ENERGY FACILITY LEASE
AND EASEMENT AGREEMENT

THIS MEMORANDUM OF SOLAR ENERGY FACILITY LEASE AND EASEMENT AGREEMENT ("Memorandum") is executed as of _____ , 2016 by and between City of Big Lake, a municipal corporation, having an address at 160 Lake St N Big Lake, MN 55309 (the "Lessor"), and Big Lake HoldCo, LLC a Delaware limited liability company, having an address at 3944 Xerxes Ave S, Minneapolis, MN, together with its assigns ("Tenant").

RECITALS:

A. Lessor owns the land legally described on Exhibit A, attached hereto (the "Land" or "Premises").

B. Lessor and Tenant have entered into a Solar Energy Facility Lease and Easement Agreement having dated as of July 22, 2015 as amended by that certain First Amendment to Solar Energy Facility Lease and Easement Agreement dated as of _____, 2016 (the "Lease"), pursuant to which Lessor has leased to Tenant and granted Tenant certain other rights in, over, on and to that portion of the Land legally described on Exhibit A, attached hereto and certain access and utility easements over the Land.

C. Lessor and Tenant are executing this Memorandum for the purpose of evidencing and recording notice to third parties of the existence of the Lease and the leasehold, easement and other rights and interests granted by Lessor to Tenant pursuant to the Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the purpose of providing notice of the matters described herein, Lessor and Tenant hereby agree and acknowledge as follows:

1. Lease and Easement Rights.

1.1 Lease of Premises. Lessor leases to Tenant and Tenant leases from Lessor the Premises for the purpose of constructing, installing, operating and maintaining thereon a solar energy conversion system, including but not limited to any Solar Facilities (as more particularly described in the Lease) on the Premises.

1.2 Access Easement. Lessor grants to Tenant an easement over, across, on and through the Access Easement as described in the Lease and on Exhibit B attached hereto ("Access Easement") for ingress and egress to the Solar Facilities, by means of any existing roads or lands, or by such route or routes as Tenant may construct from time to time. The easement rights granted in the Lease shall include the right to improve existing roads and lanes, or to build new roads. The location and dimensions of such access roads within the Access Easement shall be determined by Tenant in Tenant's sole discretion.

In addition to the right granted above, concurrent with the execution of this Lease, the Parties shall execute and cause to be recorded in the Official Records of Sherburne County, MN, a Partial Assignment of Easement, substantially in the form attached hereto as Exhibit E (the "Partial Assignment"), pursuant to which Lessor shall assign a non-exclusive tenancy in common interest in that certain easement granted to Lessor dated December 11, 1990 and recorded April 3, 1992 as Document No. 248872. Lessee's use of the said easement shall be governed by the Partial Assignment and in the event of a conflict between the Partial Assignment and this Lease, the terms of the Partial Assignment shall be controlling.

1.3 Transmission Easement. Lessor hereby grants to Tenant an easement over, across, on and through the Premises and Access Easement for the placement and operation of transmission, distribution and/or communication equipment (including but not limited to underground or overhead transmission, collection, distribution and/or communication lines, transformers, substations and other equipment required for the transmission, collection or distribution of electric power and/or communications to or from the Solar Facilities), over and across the Land. The location and dimension of such transmission, distribution or communication facilities within the Land shall be determined by Tenant in Tenant's sole discretion.

1.4 Solar Easement. Lessor hereby grants to Tenant an easement over, across, on and through the Land for the conversion of solar power to electric energy. Lessor shall not interfere with and shall not allow any other party to interfere with the unobstructed access of the Solar Facilities to the light of the sun. Any obstruction to insolation for conversion of solar power to electric energy is prohibited throughout the entire area of the Land. Lessor may not place or plant any trees, or build or erect structures or improvements on the Land after the date of the Lease which may, in Tenant's sole judgment, impede or interfere with Tenant's ability to convert solar power to electric energy. Lessee shall have the right to trim and/or remove trees and other vegetation from the Land to the extent reasonably necessary to obtain and preserve full exposure of the Solar Facilities to the sun. The solar easement granted hereunder shall burden the Land and benefit the Premises. The solar easement granted hereunder extends across the Land, 360 degrees horizontally from the Solar Facilities and vertically through all space located above the surface of the Land, that is, 180 degrees or such greater angle as may be necessary to extend on and along a line drawn along the surface of the Land from each point along the exterior boundary of the Land through the Land, to a point on the opposite side of the Land.

1.5 Development Activities. Tenant shall have the exclusive right to use the Land for the conversion of solar energy into electrical energy and collecting and transmitting the electrical energy so converted, and to undertake all development activities related thereto, together with any and all activities, including but not limited to: (a) determining the feasibility of solar energy conversion on the Premises, including studies of insolation and other meteorological data, constructing, installing, using, replacing, relocating and removing from time to time, and maintaining and operating weather monitoring equipment, fences and buildings to properly operate, house, protect and otherwise facilitate Company's weather monitoring activities; (b) constructing, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, Solar Facilities; and (c) undertaking any other activities, whether accomplished by Tenant or a third party authorized by Tenant, that Tenant reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing. This Agreement gives the Tenant the exclusive right to convert all of the solar resources of the Land.

2. Term. The term of the Lease and the rights and interests granted to Tenant thereunder extend for a period of thirty (30) years after the earlier of (i) June 3, 2021 or (ii) the Commercial Operation Date (as defined in the Lease), unless otherwise terminated earlier pursuant to the terms of the Lease.

3. Right of First Refusal. Lessor hereby grants to Tenant a right of first refusal (the "Refusal Right"), to purchase Lessor's Interest on the terms and conditions more particularly described in the Lease. As used herein "Lessor's Interest" shall mean (i) Lessor's fee interest in the Premises or such larger tract which includes the Premises; and (ii) if Lessor is a corporation, partnership, limited liability company, trust or other entity, any ownership or beneficial interest in such corporation, partnership, limited liability company, trust or other entity representing the right to receive 50% or more of the profits of such entity. Any purchase of all or part of the Lessor's Interest shall be subject to Tenant's right of first refusal as more particularly described in the Lease.

4. Counterparts. This Memorandum may be executed in two or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

5. Notice. The purpose of this instrument is to give notice of said Lease and all of its terms, covenants, and conditions to the same extent as if said Lease were set forth herein. This Memorandum of Lease is not a complete recitation all the terms and conditions of the Lease and is not to be construed as restricting, enlarging, modifying or amending the Lease. Lessor and Tenant possess executed counterparts of the Lease to which reference is made for a complete recitation of all terms and conditions set forth therein.

6. Conflict Between Lease and Memorandum. In the event of any conflict between the terms and conditions of this instrument and the terms and conditions of the Lease, the terms and conditions of the Lease shall control.

[signatures on next page]

MEMORANDUM OF
SOLAR ENERGY FACILITY
LEASE AND EASEMENT AGREEMENT

Lessor Signature Page

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the _____ day of _____, 201_.

LESSOR:
CITY OF BIG LAKE

By: _____
Its: Mayor

By: _____
Its: City Administrator

STATE OF MINNESOTA)
)SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201_, by _____ , and _____, respectively the Mayor and City Administrator of the City of Big Lake on its behalf and pursuant to the authority granted by its City Council.

_____
Notary Public

MEMORANDUM OF
SOLAR ENERGY FACILITY
LEASE AND EASEMENT AGREEMENT

Lessee Signature Page

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed as of the _____ day of _____, 201_.

LESSEE:

BIG LAKE HOLDCO LLC

By:_____
Its:_____

STATE OF MINNESOTA)
) SS:
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 201_, by, on behalf of the limited liability company.

_____
Notary Public

MEMORANDUM OF
SOLAR ENERGY FACILITY
LEASE AND EASEMENT AGREEMENT

Exhibit A

Legal Description of the Land

The North 1509.65 feet of the West Half of the Southwest Quarter of Section 25, Township 33, Range 28, Sherburne County, Minnesota lying East of a line drawn from a point on the North line of said West Half of the Southwest Quarter distant 862.58 feet West of the Northeast corner of said West Half of the Southwest Quarter to a point on the South line of said West Half of the Southwest Quarter distant 873.18 feet West of the Southeast corner of said West Half of the Southwest Quarter, EXCEPT that part of the North 1509.65 feet of the West Half of the Southwest Quarter of Section 25, Township 33, Range 28, Sherburne County, Minnesota which lies westerly of the West line of the East 768.30 feet, as measured at a right angle from the East line thereof, of said West Half of the Southwest Quarter and which lies easterly of a line drawn from a point on the North line of said West Half of the Southwest Quarter distant 862.58 feet West of the Northeast corner of said West Half of the Southwest Quarter to a point on the South line of said West Half of the Southwest Quarter distant 873.18 feet West of the Southeast corner of said West Half of the Southwest Quarter.

MEMORANDUM OF
SOLAR ENERGY FACILITY
LEASE AND EASEMENT AGREEMENT

Exhibit B

Legal Description of the Access Easement

That part of the East 35.00 feet of the West Half of the Southwest Quarter of Section 25, Township 33, Range 28, Sherburne County, Minnesota, lying northerly of the northerly right of way line of Minnesota State Highway No. 25 and lying South of the North 1509.65 feet of said West Half of the Southwest Quarter.

SOLAR ENERGY FACILITY
LEASE AND EASEMENT AGREEMENT

Exhibit E

Decommissioning Payment Schedule

City of Big Lake Revised Decomm Payment Schedule						
		End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5
	Upfront Cash/25%	Cash Payment 6.25%	Cash Payment 6.25%	Cash Payment 6.25%	Cash Payment 6.25%	Bond/Letter of Credit
$25,000/MW						
$125,000	$31,250	$7,812.50	$7,812.50	$7,812.50	$7,812.50	$62,500
Bond/LOC	$93,750	$85,937.50	$78,125.00	$70,312.50	$62,500.00	
Timing	Date of Building Permit (BP)	1st Anniversary of BP	2nd Anniversary of BP	3rd Anniversary of BP	4th Anniversary of BP	5th Anniversary of BP

The first payment would be required at the time of the building permit and subsequent payments would be on that anniversary date