

FORM APPROVED COUNTY COUNSEL
 BY: GREGORY P. PRIAMOS
 DATE: 6/9/15

Departmental Concurrence

**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

276



FROM: Economic Development Agency

SUBMITTAL DATE:
 June 4, 2015

SUBJECT: Approval of First Amendment to Lease with NRG Solar Blythe II at Blythe Airport; 30-year Lease; Finding Nothing Further Required Under CEQA; District 4 [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that although the lease amendment could have a significant effect on the environment, nothing further is required under CEQA because all potentially significant effects have been fully analyzed in earlier Environmental Assessment No. 42340 and Mitigated Negative Declaration and have been avoided or mitigated to less than significant pursuant to that earlier Mitigated Negative Declaration.
2. Approved the attached First Amendment to the Lease with NRG Solar Blythe II and authorize the Chairman of the Board to execute the same on behalf of the Board.

(Continued)

Robert Field
 Assistant County Executive
 Officer/EDA

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS: N/A	Budget Adjustment: No
	For Fiscal Year: 2015/16

C.E.O. RECOMMENDATION:

APPROVE
 BY:
 Rohini Dasika

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Washington, seconded by Supervisor Benoit and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley
 Nays: None
 Absent: None
 Date: June 16, 2015
 xc: EDA, Recorder

Kecia Harper-Ihem
 Clerk of the Board
 By:
 Deputy

A-30
 Positions Added
 4/5 Vote
 Change Order

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FORM 11: First Amendment to Lease with NRG Solar Blythe II at Blythe Airport; 30-year Lease; Finding Nothing Further Required Under CEQA; District 4 [\$0]

DATE: June 4, 2015

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RECOMMENDED MOTION: (Continued)

3. Authorize the Assistant County Executive Officer/EDA, or his designee, to execute any other documents and administer all actions necessary to complete this transaction.
4. Direct the Clerk of the Board to file the Notice of Determination with the County Clerk within five days of approval.

BACKGROUND:

Summary

On December 14, 2010, the Board of Supervisors approved a 30-year lease agreement between the County and NRG Solar Blythe II (NRG) for approximately 156 acres of real property, known as Assessor's Parcel Number 821-110-003, located at Blythe Airport. A map of the leased property location is attached for reference.

On December 14, 2010, the Board also approved an Option Agreement with NRG and a related Plot Plan (PP 24616) for a solar power plant project that could be built in phases for a total of 100 megawatts (MW) on approximately 829 acres at Blythe Airport. NRG did not timely exercise the Option Agreement for the additional acreage and the Option Agreement is now expired. Additionally, PP 24616 has also expired for lack of use in accordance with its conditions of approval and Ordinance No. 348. Accordingly, NRG's current property interest at Blythe Airport is limited to the 156 acres under the lease and NRG is contemplating moving forward with no more than a 20 MW photovoltaic solar power plant on that 156 acres.

Now, NRG and the County desire to amend the lease. Specifically, the first amendment to the lease amends the following sections:

Section 2.4 (County Termination Rights) - Extends the County's termination rights from five years to seven years from the original effective date of December 14, 2010.

Section 5.1 (Lessee's Facility) - Extends the construction completion date from five years to seven years from the original effective date of December 14, 2010.

Section 5.5 (Removal of Property) - Amends the section to clarify that NRG must remove all solar power plant fixtures, machinery, equipment, and other materials from the leased premises within 180 days following expiration of the lease at NRG's own expense. Compliance with this section will be subject to all requirements of any decommissioning plan and decommissioning/remediation bond, or other security, imposed by the County in the conditions of approval for any solar power plant development on the leased property.

Section 6.1 (Use) - Amends the section to clarify that the contemplated use of the leased property is a solar power plant of no more than 20 MW. The parties agree that since the solar power plant use on the leased property shall have a rated production capacity of 20 or fewer megawatts, it shall not be subject to Board of Supervisors Policy No. B-29 and that any change of proposed use of the site to include a solar power plant with a rated production capacity of more than 20 megawatts shall require compliance with Board of Supervisors Policy No. B-29, as well as additional development approvals from the County.

(Continued)

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
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Section 6.3 (The County's Reserved Rights) – Amends subsection (b) to clarify that the County reserves the right to further develop or improve the aircraft operating area of Blythe Airport as the County deems appropriate provided such development or improvements do not unreasonably interfere with NRG's solar power plant facility, including, but not limited to, unreasonably blocking or unreasonably impairing the access (whether direct or indirect) to sunlight.

Finally, the first amendment also updates the contact information for NRG in Section 14.1 of the lease. All other provisions of the original lease remain in full force and effect.

Staff has determined that although the lease, and its first amendment, between the County and NRG could have a significant effect on the environment, nothing further is required because all potentially significant effects have been fully analyzed in Environmental Assessment No. 42340 and Mitigated Negative Declaration (MND) and have been avoided or mitigated to less than significant pursuant to that earlier MND. The potential environmental effects of the 100 MW solar power plant project, including the lease and the option agreement, were fully studied in Environmental Assessment No. 42340. Based upon the findings incorporated therein, the Board of Supervisors adopted a MND on December 14, 2010. Entering into this first amendment to the lease will not result in any new significant environmental effects not identified in the MND; the action will not substantially increase the severity of the environmental effects identified in the MND; no considerably different mitigation measures have been identified; and no mitigation measures found infeasible have become feasible. The first amendment to the lease does not alter the overall duration of the lease, the contemplated solar power plant use of the leased property, or the underlying lease footprint. In fact, while the solar power plant project and its related MND originally contemplated a 100 MW project covering over 600 acres, the first amendment to the lease makes clear that the contemplated use of the leased property (156 acres only) shall be a solar power plant of no more than 20 MW. As a result, no further environmental documentation is required for CEQA purposes.

Impact on Residents and Businesses

Any future solar power plant project on the leased premises will aid in the transmission of renewable energy to the power grid.

SUPPLEMENTAL:

Additional Fiscal Information

This is a revenue lease and no Departmental funding is required. Per Section 3.2 of the lease, the rent is \$270 per gross acre per year to be increased by 2.5% annually. After the fifth year of the lease term and at five year intervals, the County may have the leased property appraised at its own expense and may increase the rent by the greater of 2.5% from the year prior or 7% of the fair market value of the leased property as set forth in the appraisal.

Attachments:

First Amendment to Lease
Notice of Determination
Project Location Map

This is to advise that the Riverside County Board of Supervisors approved the above project on

Lead agency or Responsible Agency

and has made the following determinations regarding the above described project:

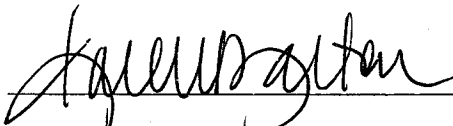
(Date)

1. The project will will not have a significant effect on the environment.
2. An Environmental Impact Report and Addendum was prepared for this project pursuant to the provisions of CEQA.
 A Mitigated Negative Declaration was previously prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures were were not made a condition of the approval of the project.
4. A Mitigation reporting or monitoring plan was was not adopted for this project.
5. A statement of Overriding Considerations was was not adopted for this project.
6. Findings were were not made pursuant to the provisions of CEQA.
7. Nothing further is required because all potentially significant effects were adequately analyzed in Environmental Assessment No. 42340 and the Mitigated Negative Declaration approved by the Board on December 14, 2010.

This is to certify that the Environmental Assessment No. 42310/Mitigated Negative Declaration, is available to the General Public at:

County of Riverside
Economic Development Agency
3403 10th Street, 4th Floor
Riverside, CA 92501

Signature: (Public Agency)



Title:

Board Assistant

Date:

6/16/15

Date received for filing at OPR: _____

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE ("1st Amendment"), dated as of June 16, 2015, is entered by and between the County of Riverside, a political subdivision of the State of California ("County"), as Lessor, and NRG Solar Blythe II, a Delaware Limited Liability Company, as Lessee, sometimes collectively referred to as the "Parties".

RECITALS

A. Lessor and Lessee have entered into that certain Lease, dated December 14, 2010, (the "Original Lease") pursuant to which Lessor has agreed to lease to Lessee and Lessee has agreed to lease from Lessor approximately 156 acres of real property, known as Assessor's Parcel Number 821-110-003, located at Blythe Airport, County of Riverside, as more particularly described in the Original Lease (the "Original Premises").

B. On December 14, 2010, Lessor and Lessee also entered into a separate Option Agreement ("Option Agreement") granting Lessee the option to lease approximately 673 additional acres of real property at Blythe Airport, known as Assessor's Parcel Numbers 821-080-040, 821-080-041, and 821-110-002. Lessee did not timely exercise the Option Agreement and the Option Agreement is now expired. Accordingly, Lessee's interest is limited to the 156 acres of real property known as Assessor's Parcel Number 821-110-003, as described in the Original Lease.

C. The Parties now desire to amend the Original Lease to, among other things, provide for certain terms and conditions concerning the County's termination rights, improvements on the Original Premises, removal of property on the Original Premises, use of the Original Premises, and notice information.

D. For the purposes of this 1st Amendment and the Original Lease, "solar power plant" shall mean a photovoltaic facility using solar cells to generate electricity from solar energy where the power plant will be connected to the power grid and the electricity will be used primarily (i.e. more than 50 percent) at locations other than the site of the solar power plant. A solar power plant does not include a solar energy system as defined in Riverside County Ordinance No. 348.

E. The Original Lease together with this 1st Amendment are collectively referred to herein as the "Lease."

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Section 2.4 County Termination Rights of the Original Lease is hereby amended by the following:

2.4 County Termination Rights. Notwithstanding the terms provided in Articles XI and XIII, County shall have the right to terminate, without cause, in the event (a) the Federal Aviation Administration ("FAA") does not within two (2) years of the Effective Date approve the land use change for Lessee's proposed use of the Leased Property and the National Environmental Policy Act ("NEPA") Environmental Assessment Document, in each case if and to the extent required by applicable FAA laws, rules or regulations or (b) in the event that Lessee does not perform within the seven (7) year period pursuant to Article V.

2. Section 5.1 Lessee's Facility of the Original Lease is hereby amended by the following:

5.1 Lessee's Facility. Without limitation upon the other provisions of this Article V, and subject to Lessee obtaining all development approvals, entitlements and permits required by applicable law, the County agrees that Lessee, at Lessee's sole cost and expense, shall construct, own, operate, maintain, replace, repower, and improve upon the Leased Property a photovoltaic solar power plant together with related improvements, appurtenances, streets, sidewalks and facilities (together, "Lessee's Facility") within seven (7) years after the Effective Date subject to Force Majeure (as defined below). In the event that Lessee has not completed construction of or is operating Lessee's Facility by the date that is seven (7) years after the Effective Date, subject to Force Majeure, then the County shall have the right as its sole remedy to terminate this Lease upon not less than ninety (90) days written notice to Lessee, whereupon this Lease shall terminate, and the parties shall have no further rights or obligations hereunder.

3. Section 5.5 Removal of Property of the Original Lease is hereby amended by the following:

5.5 Removal of Property. Title to and ownership of all Improvements constructed by, on behalf of, or at the direction of Lessee shall be and remain in Lessee. Upon expiration or termination of this Lease, Lessee shall surrender the Leased Property. Lessee shall remove, at its own expense, any and all of Lessee's fixtures, machinery, equipment, furniture, furnishings and/or moveable personal property installed in or on the Leased Property and/or the Improvements not later than one hundred eighty (180) days following the expiration of the Term, or earlier termination thereof. Lessee shall repair, at its own cost, any damaged caused by Lessee to the Leased Property to the extent reasonably practicable and leave the Property in a good, safe and clean condition with all materials from the Improvements properly removed from the Blythe Airport. Compliance with this section shall be subject to all requirements of any decommissioning plan and decommissioning/remediation bond, or other appropriate and sufficient security in a form acceptable to the County in the County's sole discretion, as set forth in the conditions of approval for the solar power plant development approval (conditional use permit) required pursuant to

Section 5.6 of this Lease in the event that Lessee does not remove such Improvements or otherwise comply with the removal requirements of this Section.

4. Section 6.1 Use of the Original Lease is hereby amended by the following:

6.1 Use. Subject to the terms and provisions hereof, Lessee shall have the right to use and possess the Leased Property for the development, construction, operation, ownership, maintenance, replacement, power storage, improvement and removal of a photovoltaic solar power plant not to exceed a total overall rated production capacity of more than 20 megawatts, any ancillary uses related to such solar power plant, and no other uses without the prior consent of the County. The Parties agree that since the solar power plant use on the Leased Property shall have a rated production capacity of 20 or fewer megawatts, it shall not be subject to Board of Supervisors Policy No. B-29. The Parties further agree that any change of proposed use of the site to include a solar power plant on the site with a rated production capacity of more than 20 megawatts shall require compliance with Board of Supervisors Policy No. B-29, as well as new development approvals from the County.

5. Subsection (b) of Section 6.3 The County's Reserved Rights of the Original Lease is hereby amended by the following:

(b) The County reserves the right to further develop or improve the aircraft operating area of Blythe Airport as it deems appropriate provided such development or improvements do not unreasonably interfere with Lessee's Facility, including, but not limited to, unreasonably blocking or unreasonably impairing the access (whether direct or indirect) to sunlight. The County reserves the right to take any action it reasonably considers necessary to protect the aerial approaches of the Blythe Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be erected, any building or other structure on the Blythe Airport, which in the reasonable opinion of the County, would constitute a hazard to aircraft. The foregoing rights of the County shall not adversely affect the Improvements or Lessee's rights under this Lease.

6. Section 14.1 Notices of the Original Lease is hereby amended to include the following updated notice information for the Lessee:

To Lessee: NRG Solar Blythe II
 5790 Fleet Street, Suite 200
 Carlsbad, California 92008
 Attention: Real Estate Manager
 Telephone: (760) 710-2211
 Facsimile: (760) 710-2158

With Copy To: NRG Renew LLC
5790 Fleet Street, Suite 200
Carlsbad, California 92008
Attention: General Counsel
Telephone: (760) 710-2211
Facsimile: (760) 710-2158

7. CAPITALIZED TERMS. 1st Amendment to Prevail. Unless defined herein or the context requires otherwise, all capitalized terms herein shall have the meaning defined in the Original Lease, as heretofore amended. The provisions of this 1st Amendment shall prevail over any inconsistency or conflicting provisions of the Original Lease, as heretofore amended, and shall supplement the remaining provisions thereof.

8. MISCELLANEOUS. Except as amended or modified herein, all the terms of the Original Lease shall remain in full force and effect and shall apply with the same force and effect. Time is of the essence in this 1st Amendment and the Original Lease and each and all of their respective provisions. Subject to the provisions of the Original Lease as to assignment, the agreements, conditions and provisions herein contained shall apply to and bind the heirs, executors, administrators, successors and assigns of the parties hereto. If any provisions of this 1st Amendment or the Original Lease shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of the 1st Amendment or the Original Lease and all such other provisions shall remain in full force and effect. The language in all parts of the Lease shall be construed according to its normal and usual meaning and not strictly for or against either Lessor or Lessee. Neither this 1st Amendment, nor the Original Lease, nor any notice nor memorandum regarding the terms hereof, shall be recorded by Lessee. This 1st Amendment may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

9. EFFECTIVE DATE. This 1st Amendment to Lease shall not be binding or consummated until its approval by the Riverside County Board of Supervisors and fully executed by the Parties.

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IN WITNESS WHEREOF, the parties have executed this 1st Amendment as of the date first written above.

Dated: June 3, 2015

**LESSEE:
NRG SOLAR BLYTHE II**

By: Randall Hickok
Name: Randall Hickok
Its: Vice President

By: _____
Name: _____
Its: _____

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: [Signature]
Deputy

**LESSOR:
COUNTY OF RIVERSIDE**

By: [Signature]
Marion Ashley, Chairman
Board of Supervisors

(SEAL)

APPROVED AS TO FORM:
Gregory P. Priamos
County Counsel

By: [Signature]
Anita C. Willis
Assistant County Counsel

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