

DATE: June 6, 2023

**CONSENT**

**TO:** Mayor and City Council

**FROM:** Kristina Handt, City Administrator

**AGENDA ITEM:** Approve Stipulation for Settlement and Dismissal Agreement with CEF

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**BACKGROUND:**

In April 2022 the city council denied a conditional use permit (CUP) to CEF Lake Elmo Community Solar Garden. The applicant, One Energy Development, brought an action against the city in October 2022. In April 2023 after some revised landscaping plans, the city council approved a CUP for CEF.

**ISSUE FOR DISCUSSION:**

Should Council approve the stipulation for settlement and dismissal agreement?

**PROPOSAL DETAILS/ANALYSIS:**

In order to have the case closed, the attorney representing the city is recommending approval of the attached stipulation for settlement and dismissal with prejudice agreement. Since the CUP has been approved there is no need to further litigate this issue.

**FISCAL IMPACT:**

NA

**OPTIONS:**

- 1) Authorize the Mayor and Clerk to Execute the Stipulation for Settlement and Dismissal Agreement CEF Lake Elmo Community Solar
- 2) Amend and then Authorize the Mayor and Clerk to Execute the Stipulation for Settlement and Dismissal Agreement CEF Lake Elmo Community Solar
- 3) Do not approve the Settlement and Dismissal Agreement with CEF

**RECOMMENDATION:**

If removed from the consent agenda:

***Motion to authorize the Mayor and City Clerk to Execute the Stipulation for Settlement and Dismissal Agreement CEF Lake Elmo Community Solar***

**ATTACHMENTS:**

- Stipulation and Dismissal Agreement

**STATE OF MINNESOTA**  
**COUNTY OF WASHINGTON**

**DISTRICT COURT**  
**FIRST JUDICIAL DISTRICT**

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CEF Lake Elmo Community Solar, LLC,

Plaintiff,

vs.

**STIPULATION FOR SETTLEMENT  
AND DISMISSAL WITH PREJUDICE**

City of Lake Elmo, Minnesota,

Defendant.

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This Stipulation for Settlement and Dismissal with Prejudice (“Stipulation”) is made as of the 18<sup>th</sup> day of May, 2023, by and between CEF Lake Elmo Community Solar, LLC, a Minnesota limited liability company (“Plaintiff”) and the City of Lake Elmo, a political subdivision of the State of Minnesota (“Defendant”).

**BACKGROUND**

1. On or about September 8, 2021, Plaintiff applied to Defendant for a conditional use permit to install and operate a 1-megawatt community solar garden facility to be located on approximately 7 acres of land at 10755 50th Street North, Lake Elmo, Minnesota (“Project”).

2. On November 22, 2021, the Lake Elmo Planning Commission held a public hearing to consider the application and recommended approval of the conditional use permit with conditions.

3. On April 5, 2022, the Lake Elmo City Council, after a public hearing, voted to deny Plaintiff’s application for a conditional use permit.

4. On or about October 14, 2022, Plaintiff commenced the above-captioned action (“Action”) by serving Defendant with a summons and complaint alleging, among other things, that Defendant had wrongfully denied Plaintiff’s application for a conditional use permit and seeking a judgment declaring that the conditional use permit had been wrongfully denied and enjoining Defendant to issue the conditional use permit. Defendant answered denying Plaintiff’s claims and asserting, among other things, that Defendant was not entitled to the relief Plaintiff sought.

5. Plaintiff has not filed the Action with the district court.

6. The parties to the Action thereafter engaged in good faith settlement discussions, which discussions resulted in revisions to Plaintiff’s application and proposed design for the Project. After the parties’ extensive work, Plaintiff submitted a redesign for the Project. On April 4, 2023, the Lake Elmo City Council by resolution granted Plaintiff’s application for a conditional use permit for the Project based on the Project redesign. The Resolution Approving a Conditional Use Permit for the Construction and Operation of a Solar Farm on the Property Located at 10755 50<sup>th</sup> Street North, numbered 2023-021, is attached hereto and made a part hereof as **Exhibit A**.

### **AGREEMENT**

NOW, in recognition of the foregoing background, which is incorporated by reference, the parties to this Action hereby agree as follows:

1. **Conditional Use Permit.** Plaintiff is entitled to the conditional use permit set forth in Lake Elmo City Council Resolution 2023-021 and attached hereto as **Exhibit A**.

2. **Dismissal.** The Action is dismissed with prejudice.

3. **Mutual Release.** The parties hereto acknowledge and agree that this Stipulation is full settlement of this matter including all claims that were or could have been made arising from or relating to this matter. Neither party admits any liability and each party is responsible for its own fees and costs incurred in association with this matter, including without limitation, expert, consultant, and attorney fees.

4. **Representations.** Each party acknowledges that each has read this Stipulation and has consulted counsel before executing the same; each party has relied on its own judgment and that of its counsel in executing the Stipulation and has not relied upon or been induced by any representation, statement or act by any other party that is not referred to in this instrument; each party has full authority to enter into the Stipulation which is in all respects complete and final.

5. **Entire Agreement.** This Stipulation constitutes the entire agreement of the parties as to the subject matter contained in the Stipulation.

6. **Interpretation.** This Stipulation has been reached through negotiations between the parties. Neither party may assert that this Stipulation be construed against or in favor of the drafter of the same. The parties have used their own judgment in entering into this Stipulation.

7. **Electronic Signatures and Counterparts.** The parties agree that signatures delivered by electronic means shall have the same force and effect as original signatures. The Stipulation may be executed in one or more counterparts, each counterpart to be considered an original portion of this Stipulation.

**CITY OF LAKE ELMO**

By: \_\_\_\_\_  
Charles Cadenhead

Its: Mayor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Julie Johnson

Its: City Clerk

Dated: \_\_\_\_\_

**CEF LAKE ELMO COMMUNITY SOLAR, LLC**

By: OneEnergy Development, LLC (its sole member)

By: \_\_\_\_\_  
Travis Bryan

Its: Authorized Signatory

Dated: \_\_\_\_\_

# **EXHIBIT A**

## **CITY OF LAKE ELMO WASHINGTON COUNTY STATE OF MINNESOTA**

### **RESOLUTION 2023-021**

#### **A RESOLUTION APPROVING A CONDITIONAL USE PERMIT FOR THE CONSTRUCTION AND OPERATION OF A SOLAR FARM ON THE PROPERTY LOCATED AT 10755 50TH STREET NORTH**

**WHEREAS**, the City of Lake Elmo is a municipal corporation organized and existing under the laws of the State of Minnesota; and

**WHEREAS**, CEF Lake Elmo Community Solar, LLC (the “Applicant”) has submitted an application to the City of Lake Elmo (the “City”) for a Conditional Use Permit for the construction and operation of a solar farm on the property located at 10755 50<sup>th</sup> Street North (PID# 11.029.21.11.0003) (the “Property”); and

**WHEREAS**, the Lake Elmo Planning Commission held a public hearing on said matter on November 22, 2021; and

**WHEREAS**, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated March 15, 2022; and

**WHEREAS**, the City Council considered said matter at its April 5<sup>th</sup>, 2022 meeting and voted to deny the conditional use permit request; and

**WHEREAS**, the Applicant has since revised its landscaping plans to address screening concerns that were the basis for the City Council’s denial of the conditional use permit; and

**WHEREAS**, pursuant to Minnesota Statutes Sections 462.3595, subdivision 2 and 462.357, subdivision 3, the City Council held a public hearing on March 21, 2023, to consider the proposed conditional use permit with revised plans; and

**NOW, THEREFORE**, based on the testimony elicited and information received, the City Council makes the following:

#### **FINDINGS**

- 1) That the procedures for obtaining said Conditional Use Permit are found in the Lake Elmo Zoning Ordinance, Section 105.12.290.
- 2) That all the submission requirements of said Section 105.12.290 have been met by the Applicant.

- 3) That the proposed Conditional Use Permit is for the construction and operation of a solar farm on the property located at 10755 50<sup>th</sup> Street North.
- 4) The proposed use will not be detrimental to or endanger the public health, safety, comfort, convenience or general welfare of the neighborhood or the city. ***The proposed use will not be detrimental or in any way endanger the public health, safety, comfort. Conditions intended to mitigate any potential impact have been included in the CUP, and include items such as screening, setbacks, and stormwater management.***
- 5) The use or development conforms to the City of Lake Elmo Comprehensive Plan. ***Chapter 3 of the Comprehensive Plan notes the City has incorporated standards into its zoning ordinances regarding siting of structures and buildings to support access to solar resources. Given the City's dominant residential landscape pattern, options for private property owners including individual homeowners and homeowners' associations to capitalize on solar energy are supported by the City's adopted ordinances and official controls.***
- 6) The use or development is compatible with the existing neighborhood. ***The proposed use is permitted in the Rural Residential District subject to a CUP. With conditions, the use is compatible with the existing neighborhood.***
- 7) The proposed use meets all specific development standards for such use listed in Article 7 of this Chapter. ***The proposed use will meet the specific development standards for a solar facility with specific conditions.***
- 8) If the proposed use is in a flood plain management or shoreland area, the proposed use meets all the specific standards for such use listed in Chapter 150, §150.250 through 150.257 (Shoreland Regulations) and Chapter 152 (Flood Plain Management). ***The property is located outside the 0.2% annual chance floodplain and shoreland area.***
- 9) The proposed use will be designed, constructed, operated and maintained so as to be compatible in appearance with the existing or intended character of the general vicinity and will not change the essential character of that area. ***The proposed use will be compatible in appearance with the existing and intended character of the general vicinity and will not change the essential character of the area.***
- 10) The proposed use will not be hazardous or create a nuisance as defined under this Chapter to existing or future neighboring structures. ***The proposed use will not be hazardous or create a nuisance. To help ensure this, City staff is recommending conditions for screening and decommissioning.***
- 11) The proposed use will be served adequately by essential public facilities and services, including streets, police and fire protection, drainage structures, refuse disposal, water and sewer systems and schools or will be served adequately by such facilities and services provided by the persons or agencies responsible for the establishment of the proposed use.

***No wastewater or City water facilities are needed to serve this site. The site is otherwise adequately served by existing City services.***

- 12) The proposed use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community. ***The proposed use will not create excessive additional requirements at public cost.***
- 13) The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare because of excessive production of traffic, noise, smoke, fumes, glare or odors. ***The proposed use will generate 1-3 trips per year on the site.***
- 14) Vehicular approaches to the property, where present, will not create traffic congestion or interfere with traffic on surrounding public thoroughfares. ***The proposed use will not create traffic congestion or interfere with traffic on surrounding public streets.***
- 15) The proposed use will not result in the destruction, loss or damage of a natural or scenic feature of major importance. ***The proposed use will not impact a natural or scenic feature.***
- 16) That, in accordance with City Code Section 105.12.290, the Applicant's proposed use of the Property as a solar farm shall be permissible under the Conditions 1-9 as provided in the decision below, and incorporated herein:

### **DECISION**

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, and based upon the information received and the above Findings, that the City Council of the City of Lake Elmo hereby approves the request by CEF Lake Elmo Community Solar, LLC for a Conditional Use Permit for the construction and operation of a solar farm on the property located at 10755 50<sup>th</sup> Street North, and grants the same, subject to the following conditions of approval:

Prior to issuance of City permits for the project:

- 1) Stormwater Management: A stormwater management plan meeting all State, Watershed District and City rules is required and a permit must be obtained from the Valley Branch Watershed District. These required details must be included:
  - a. Soil borings will be required for infiltration basins;
  - b. If adjacent properties are impacted by stormwater discharge, written permission from those property owners is required;
  - c. The storm water facilities must remain privately owned and maintained; and
  - d. A Stormwater Maintenance and Easement Agreement in the City's standard form is required.

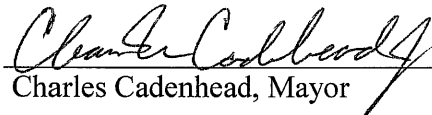


- 2) The Applicant must provide to the City Engineer a statement from a qualified engineer certifying the foundation and design of the solar panels, racking and support is within accepted professional standards, given local soil and climate conditions.
- 3) A revised landscape plan should be submitted to address the Landscape Architects memo dated March 13th 2023 and address reduced tree spacing.
- 4) Tree plantings must be 9ft. at the time of planting.
- 5) The Applicant must provide an approved interconnection agreement with Xcel.
- 6) The Applicant must provide to the Fire Department details about the proposed gate to ensure it is in compliance with the Fire Code.
- 7) The Applicant must provide a letter of credit in the amount of \$120,652 for decommissioning the site. The letter of credit must be in good standing at all times and issued by a bank determined by the City to be solvent and creditworthy. The letter of credit shall be in a form approved by the City. In the event the letter of credit is not renewed or is cancelled, the City may revoke the conditional use permit.
- 8) The Applicant must obtain all other necessary City, State, and other governing body permits prior to the commencement of any construction activity on the parcel including but not limited to an approved stormwater management plan, utility plans, grading plan, and building permits.

General:

- 8) The Applicant must install a Fire Department lock box for emergency access to the site at an approved location and provide keys for emergency access into the property and any controls necessary for emergency use or shut down.
- 9) The modules and equipment on the site must be removed within 90 days after the site is no longer operational or has not operated continuously for 12 months. In the event that it is not removed by that time, the City has permission to enter the property to remove the modules and equipment and recover its costs from the letter of credit. In the event that the letter of credit is insufficient to cover the City's costs, the City shall certify the costs against the property and collect the costs with the property taxes.

Passed and duly adopted this 4<sup>th</sup> day of April 2023 by the City Council of the City of Lake Elmo, Minnesota.

  
Charles Cadenhead, Mayor

ATTEST:



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Julie Johnson, City Clerk