



# Board Agenda Item 11.1

DATE: December 9, 2025

TO: Board of Supervisors

SUBMITTED BY: Raymond T. Hunter, Director, General Services Department

SUBJECT: Agreements with Bloom Development, Inc.

RECOMMENDED ACTION(S):

1. Conduct a public hearing in accordance with California Government Code, section 4217.12 for your Board to determine that the terms of the Master Fuel Cell Power Purchase Agreement (in Recommended Action No. 4), and each System Order Agreement with Bloom Development, Inc. (in Recommended Action No. 5), are in the best interests of the County, and to find that the anticipated costs to the County for electrical energy or conservation services to be provided by the solid oxide fuel cell systems under each of the proposed System Orders, respectively, will be less than the County's anticipated marginal costs for the purchase of such energy and conservation services in the absence of each proposed System Order, respectively;
2. Adopt and authorize the Chairman to execute Resolution making the determinations and findings as described in Recommended Action No. 1 (California Government Code, section 4217.12);
3. Under Administrative Policy No. 34 for competitive bids or requests for proposals (AP 34), determine that an exception to the competitive bidding requirement under AP 34 is satisfied and a suspension of competition is warranted due to unusual or extraordinary circumstances, as Bloom Development, Inc. is the only vendor with access to their proprietary formulation and software for their solid oxide fuel cell systems, which offers the County a uniquely power-dense clean energy solution;
4. Approve and authorize the Chairman to execute the Master Fuel Cell Power Purchase Agreement-General Terms and Conditions with Bloom Development, Inc. to provide general terms and conditions for the installation, operation, and maintenance of solid oxide fuel cell systems and recommended System Order Agreements (in Recommended Action No. 5), with an initial 20-year term and unlimited optional one-year renewals;
5. Approve and authorize the Chairman to execute the System Order Agreements with Bloom Development, Inc. for the design, engineering, permitting, procurement, construction, installation, start-up, testing, and commissioning of solid oxide fuel cell systems, allowing the County to purchase energy at specified rates for each of the Fresno County Sheriff Office Jail and Plaza Building, effective upon execution for an initial 20-year term and unlimited optional one-year renewals; and
6. Authorize the Director of General Services, or their designee, to approve and execute:
  - a. All interconnection applications and agreements required by the local utility company

- to operate the solid oxide fuel cell systems;**
- b. Contract change orders, not to exceed a \$0.01 per kilowatt hour increase in the specified base rates detailed in the System Orders; and**
- c. Any agreements, consents, waivers, incumbency, estoppel, or similar certificates, recordable real estate property rights, and any related documents, all subject to approval by County Counsel as to legal form and Auditor-Controller/Treasurer-Tax Collector as to accounting form, necessary to finalize and execute the recommended Agreements, including any financing that Bloom Development, Inc. might later obtain in relation to such Agreements.**

There is no additional Net County Cost associated with the recommended actions. The first and second recommend actions will allow your Board to adopt and authorize a Resolution determining that Bloom Development, Inc's (Bloom) proposed Master Fuel Cell Power Purchase Agreement (PPA) and System Order Agreements (System Order or collectively, System Orders) are in the best interest to the County as anticipated costs for electrical energy or conservation services provided by the oxide fuel cell system(s) (System or collectively, Systems) will be less than the County's anticipated marginal costs for the purchase of such energy and conservation services otherwise.

The third, fourth and fifth recommended actions will approve the proposed PPA with Bloom for the installation, operation, and maintenance of the Systems alongside the proposed System Orders for the design, engineering, permitting, procurement, construction, installation, start-up, testing, and commissioning of each of the following Systems: (1) an estimated 2,210 kilowatt (kW) system located at the Fresno County Sheriff Office Jail Buildings (FCSO Jail) at 2280 Tulare Street, and (2) an estimated 455 kW system located at the Plaza Building (Plaza) at 2220 Tulare Street. Bloom is the only vendor with access to their proprietary formulation and software for their Systems which offers the County a uniquely power-dense clean energy solution for the limited space available in downtown Fresno.

The sixth recommended action will allow the Director of the General Services Department (GSD, and Director), or their designee, to approve and execute: all interconnection applications and agreements required by the local utility company to operate the Systems, any change orders to the specified base rates up to \$0.01 per kilowatt hour (kWh) detailed in the System Orders, and execute any agreements, consents, waivers, incumbency, estoppel, or similar certificates, recordable real estate property rights, and any related documents, as approved by County Counsel as to legal form and Auditor-Controller/Treasurer-Tax Collector as to accounting form, necessary to finalize and execute the recommended PPA and System Orders (collectively, Agreements). This item pertains to locations in District 3.

#### ALTERNATIVE ACTION(S):

Should your Board not approve the first five recommended actions, the County would be unable to move forward with the recommended Agreements and would not receive potential energy cost savings. Your Board may direct staff to release a competitive bid for similar services instead of utilizing California Government Code, section 4217.12 and AP 34 as a method for procuring energy services. Your Board may approve some, or none, of the recommended Agreements.

Should your Board not approve the sixth recommended action, GSD would return to your Board to execute documents otherwise considered common and routine in nature to finalize and execute next steps, as required, under the recommended Agreements. The required documentation, including interconnection agreements, change orders, and property-related legal instruments, are common for both energy-generation projects in which the County is required to work with the local utility provider for system interconnection, as well as for projects where a vendor is installing rented equipment on County-owned property.

#### SUSPENSION OF COMPETITION/SOLE SOURCE CONTRACT:

The Department's request to suspend the competitive bidding process is consistent with AP 34, for unusual or extraordinary circumstances as Bloom is the sole provider of their proprietary Systems, which include exclusive access to their patented ceramic formulation and integrated software. These Systems deliver a uniquely power-dense, clean energy solution. While other vendors offer similar solid oxide fuel cell technologies, only Bloom's proprietary ceramic blend significantly reduces heat loss, enabling smaller System footprints and maximizing energy output within limited spaces. Given that the proposed installation sites are located in downtown Fresno, this compact and efficient design allows the County to achieve optimal energy savings and space utilization. The GSD-Purchasing Division has reviewed and concurs with the Department's justification to suspend the competitive bidding process.

#### FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. By design, the proposed Agreements are expected to yield a positive cashflow, as the purchase price per kWh is anticipated to be less than what the County will pay for energy from the Pacific Gas and Electric Company (PG&E) for the two sites. The Plaza System is not expected to yield a positive cashflow until the second year, while the FCSO Jail System is expected to yield a positive cashflow in all years.

Costs associated with the recommended Agreements will be recovered through chargebacks to user departments, including the County Administrative Office, County Clerk, County Counsel, Department of Child Support Services, Department of Human Resources, Department of Public Works and Planning, GSD, Information Technology Services Department, Probation Department, and the Sheriff's Office. Sufficient appropriations and estimated revenues are included in GSD-Facility Services Org 8935 FY 2025-26 Adopted Budget and will be included in subsequent Recommended Budget requests for the duration of the Agreements' terms.

#### DISCUSSION:

##### Enabling Laws & Procurement Process

The Legislature has declared its intent (Public Resources Code, section 25008) for the State to promote all feasible means of energy and water conservation as well as uses of alternative energy and water sources. To support this policy at local government facilities, California Government Code, section 4217.10 allows public agencies, such as the County, to develop energy conservation and alternate energy supply sources in accordance with California Government Code, sections 4217.10 through 4217.18. California Government Code, section 4217.12 expressly allows a public agency, notwithstanding any other law, to enter into an energy services contract on terms its governing body determines are in the agency's best interests. This determination must be made at a regularly scheduled public hearing, with public notice given at least two weeks in advance, and certain findings must be made, as outlined below. As required, public notice of this hearing was posted at least two weeks in advance, on November 24, 2025, placed in noticing boards at the FCSO Jail and Plaza, as well as published in *The Business Journal* on November 24, 2025.

The recommended Agreements are proposed under California Government Code, section 4217.12, and AP 34 for unusual or extraordinary circumstances. Bloom offers the County a unique solution to streamline clean energy and energy savings by with their turn-key solution and propriety setup. The Systems are unique not only from the propriety electrolyte formulation that allows for better heat efficiency, but they also eliminate the need for combustion, which limits carbon dioxide, sulfur oxide and nitrogen oxide emissions, require less water from recycling steam generated during the process, offer fuel flexibility for long-term energy security, and have a microgrid configuration for continuous on-site power independent of the grid. Bloom's solution is the most advantageous to the County by offering a unique clean energy solution through their turn-key, power-dense solid oxide fuel cell system.

##### General Terms and Conditions/PPA

The recommended PPA sets forth general terms and conditions for the installation, operation, and maintenance of any and all System Orders issued in accordance with the PPA.

The PPA is on Bloom's standard template and includes some non-standard terms, including:

- Loss of Deposits - If the County elects to terminate any PPA prior to expiration of the term, outside of a non-appropriation event or Bloom's default, Bloom may request reimbursement from the County for any deposit or performance assurance amount that they are unable to recover using commercially reasonable efforts.
- Indemnification - Both the County and Bloom shall indemnify, defend, and hold harmless the other party against all third-party claims, suits, penalties, obligations, damages, losses, liabilities, payments, costs, and expenses from: (i) injury or death; and (ii) loss or damage of property caused by gross negligence or willful misconduct, the breach of obligations under the related PPA, or the inaccuracy of any representations made.

Bloom will indemnify, defend, and hold harmless the County from any claim caused by hazardous materials introduced to the site by Bloom, and the County will indemnify, defend, and hold harmless Bloom for any claim arising from the presence of hazardous materials at a site.

Bloom will indemnify, defend, and hold harmless the County from any claim caused by a breach of infringement warranty; Bloom guarantees that the Systems do not violate any third-party intellectual property rights. This warranty is limited such that the County cannot combine the System with any product not approved by Bloom, or in any way otherwise modify the System. Should such an infringement claim arise, Bloom has the ability to modify the System to avoid infringing on intellectual property rights, while maintaining the System's functionality at a discounted rate for reduced operations, or fully replace the System meeting the original specifications, also with a discounted rate for reduced performance.

- Limitation of Liability - Except for claims arising from breach of intellectual property or confidentiality, and third-party claims subject to the above-outlined indemnification, both Bloom and the County are not liable to each other for loss of profit or revenues, loss of equipment or system use, interruptions to business, cost of replacement power, cost of capital, downtime, increase in operating, or any special, indirect, incidental, punitive, or consequential damages. Bloom will have no liability for claims arising from misuse of the Fuel Cell Systems. Both party's aggregate liability for all claims cannot exceed \$2,210,000 for FCSO Jail System Order and \$455,000 for the Plaza System Order.
- Early Termination - Under the recommended PPA, Bloom and the County have the option to terminate each System Order and the PPA upon exercising remedies available in the event of a default. If a default event is caused by Bloom, the County can elect to terminate the System Order and have no obligation to pay the termination value of the System, as detailed in the respective System Order, or any other amount (excluding any due and owing under the affected System Order). In this event, Bloom will be solely responsible for costs and expenses in connection with removal of the System. If a default event is caused by the County, Bloom can terminate the System Order and require the County to pay the termination value, as detailed in the System Order.

The County is the only party under the recommended PPA with the ability to terminate any System Order for convenience. If the County terminates for convenience before the commercial operation date (COD) of the System, the County will not be liable for any termination value, but will be required to pay any reasonable and documented costs incurred by Bloom plus 20%, and any reasonable and documented financing costs plus 20%. If the County terminates for convenience after COD, the County shall be liable for the termination value, as detailed in the respective System Order.

- Installation Cost Related Termination - The County may terminate the recommended System Order upon receiving updated installation costs that exceed the base rate adjustment termination amount (Base Rate Adjustment Termination Amount) set forth in the System Order. In the event of such termination, the County is liable only for reasonable and documented costs incurred by the date of termination.

The Human Resources Department - Risk Management Division has reviewed these provisions and recommends against this language, otherwise suggesting GSD request from Bloom higher coverage for claims or insertion of more standard County terms; however, GSD believes they are acceptable business risks. GSD negotiated a more favorable Base Rate Adjustment Termination Amount to limit change order and price increases allowable. Additionally, GSD recognizes that there are additional assurances surrounding the installation, COD, and System operation provided to Bloom's financiers. Though these additional assurances seem to limit the County's ability to recover costs from non-performance under the proposed PPA, GSD understands that the financier also has interest in the success of the Systems so Bloom will make every effort to ensure the System achieve commercial operation by the scheduled dates and the System remain operational. While there are deviations to the County's standard language, as well as not being on the County's standard agreement template, the PPA does include many County standards terms including: non-appropriation language, the County's insurance terms and Self-Dealing Transaction Disclosure form.

#### Explanation of the Systems

The Systems utilize solid oxide fuel cells, which create energy through a high-temperature electrochemical reaction involving three key components: an anode, a cathode, and a solid ceramic electrolyte. In Bloom's design, proprietary ink-coated electrodes sandwich the ceramic electrolyte; ambient air enters through the cathode while steam combines with fuel-typically natural gas or biogas-on the anode side to produce a reformed fuel. This fuel reacts with oxygen ions that migrate through the electrolyte from the cathode, producing electricity, carbon dioxide, and steam. In general, as long as air and fuel are supplied, the solid oxide fuel cells convert chemical energy into electricity at the point of use.

Both Systems will also have microgrid equipment (Microgrid) installed as part of the System, which will allow the System to autonomously generate electricity without connection to the electrical grid. The Microgrid allows the Systems switch between, and operate in, both a grid-parallel mode (meaning that they operate in parallel with the utility grid as an energy generation resource) and stand-alone mode (meaning they are operating during utility grid outages and need to supply). Not every System Bloom installs has this feature, but the County sees value in having this additional resource of the Microgrid to help offset costs related to diesel generator use, from fuel usage, maintenance and repairs.

#### Recommended System Orders

The recommended System Orders incorporate the general terms and conditions outlined in the PPA as well as details relating to the design, engineering, permitting, procurement, construction, installation, start-up, testing and commissioning work for each specific System; the two proposed locations for such Systems are the FCSO Jail and Plaza buildings. Under each recommended System Order, Bloom would provide electrical energy to the County at the specified service rates, detailed in the respective agreements. The amount owed for energy generation is calculated by multiplying the total payment rate (including a base rate for the system plus an additional rate for the Microgrid) by the total energy delivered (including both energy measured by the meter and energy otherwise "deemed delivered"). These rates are set to increase by two percent annually.

#### Guaranteed COD

Bloom guarantees COD within 24 months of the execution of the recommended System Order. Bloom shall

pay the County \$500 per day, up to \$52,000 for the entire term in liquidated damages, should they not achieve COD when guaranteed. The guaranteed COD is dependent upon the County completing certain installation obligations within the timeframes designated in the recommended System Orders.

#### Performance Guarantee and Estimated Savings

Under each System Order, Bloom will provide electrical energy to the County at the specified rates. Although the recommended System Orders do not provide guaranteed dollar-based savings, Bloom makes the other guarantees relating to System performance and efficiency. Bloom can track System performance via a heat rate which measures fuel usage against delivered energy; in general, the higher the heat rate, the less efficient the System. Bloom warrants that the Systems will maintain an average heat rate no more than the warranted heat rate, compared to both an efficiency warranty (EW) and efficiency guaranty (EG).

- Efficiency Warranty: In the event a System fails to perform according to the described EW, the County shall send notice in writing to Bloom, who will be required to perform a “warranty correction,” meaning any required System repairs or replacements to get the System back to operating in the EW range.
- Efficiency Guarantee: In the event a System fails to perform according to the described EG, the County shall again send notice in writing to Bloom. Bloom will, within 60 days of verifying the claim, pay the County the applicable amount of efficiency liquidated damages, as described in a table in the System Order. These rates seem to directly correlate to the anticipated fuel costs for each term year, meaning the County will only recover costs associated with additional fuel expenses from System under-performance and will not receive compensation beyond the actual cost impact. The liquidated damages paid in relation to EG is capped to \$204,425 for FCSO Jail and \$42,088 for Plaza.
- Microgrid Warranty: In the event of a warranty deficiency under the Microgrid Warranty (MW), Bloom shall notify the County and dispatch a technician within eight hours of receiving such notification to perform necessary repairs. After 24 cumulative hours of warranty deficiency over the full term of the System Order, Bloom will compensate the County at a rate of \$0.20/kW of installed System capacity for each hour until the deficiency is resolved. Microgrid liquidated damages are capped at \$442,000 for FCSO Jail and \$91,000 for Plaza.

Outside of the EG and MW, the County does not have ways to recover costs associated with System underperformance. For comparison, the EW and EG are set at 50% and 54% efficiency levels, respectively; while not stated in the System Orders, Bloom's proposal (detailed in Exhibit A), projects the system running between 95% to 99.9% efficiency for the full 20-year term. With Bloom's current projections, which take a conservative approach to price increases for utilities and fuel costs, the County anticipates saving over \$338,000 in the first year and over \$19,800,000 for the 20-year period.

Additional System Order guarantees include:

- Guaranteed Commercial Operation: Both System Orders include a guaranteed commercial operation date COD deadline, or final date for when the Systems need to be installed and operational. For both sites, the Guaranteed COD is 24 months from the System Order execution. Should Bloom fail to achieve commercial operation by the Guaranteed COD, Bloom will pay the County \$500 per day, up to \$52,000 for each site, in liquidated damages.
- System Size and Guaranteed Critical Output: Both System Orders provide a guaranteed system size and guaranteed critical output for the respective Systems. HOR has a guaranteed system size of 2,210 kW, and critical output of 1,638 kW (in the event of a power outage, or something similar, where the Microgrid takes over). Plaza has a guaranteed system size of 455 kW, and critical output of 344 kW.

### California Environmental Quality Act

Staff from the Department of Public Works & Planning have evaluated the projects in compliance with the California Environmental Quality Act (CEQA), article 19, sections 15301(b) and 15302(c) guidelines, and will issue a categorical exemption of such projects based on those guidelines. If your Board approves the recommended System Orders, a notice of exemption, for each System, will be filed by staff with the County Clerk.

### Director Delegated Authority

Recommended Action No. 6 requests your Board to authorize the Director, or their designee, to approve and execute any interconnection applications and agreements required by PG&E to operate the Systems, contract change orders, not to exceed a \$0.01/kWh increase in the specified base rates for services, and any agreements, consents, waivers, incumbency, estoppel, or similar certificates, recordable real estate property rights, and any related documents, all subject to approval of County Counsel as to legal form and Auditor-Controller/Treasurer-Tax Collector as to accounting form.

Under the recommended PPA, Bloom will deliver to the County interconnection applications or agreements required by PG&E to connect the Systems to the local utility grid. The County will be required to execute these documents. As a common administrative task, GSD is seeking approval for the Director to execute these interconnection applications.

The recommended PPA includes language allowing a potential adjustment to the rates via the Base Rate Adjustment Termination Amount which limits Bloom to a \$0.01/kWh increase in the base rate. This adjustment also has a corresponding effect on the termination values reflected in the respective System Orders. Though Bloom has already done preliminary on-site due diligence investigations at the proposed locations to calculate the rates for each site, the County recognizes that there may be changes or additions in the work; this adjustment will allow Bloom to capture the actual condition and cost of the installation work should any change orders be required. GSD requests the Director be granted authority to approve adjustments to the rates and termination values, such that the increase does not to exceed \$0.01/kWh of the current identified rates. Should Bloom propose an increase in excess of \$0.01/kWh, GSD would return before your Board for consideration and direction.

The recommended PPA references Bloom's ability to use one or more financing partners to execute the recommended System Orders, meaning the County may be required to provide estoppel or other certificates to Bloom's financing partner(s) to be recorded against the premises for the project. For expedience and ease of executing documents that are both routine in nature for these types of projects (meaning for the design, engineering, permitting, procurement, construction etc. of energy generation systems), and as detailed under the recommended Agreements, GSD requests authorization for the Director to approve and execute such documents.

### ATTACHMENTS INCLUDED AND/OR ON FILE:

Exhibit A  
Suspension of Competition  
On file with Clerk - Resolution  
On file with Clerk - PPA  
On file with Clerk - System Order (FCSO Jail)  
On file with Clerk - System Order (Plaza)

### CAO ANALYST:

Amy Ryals