



Board Agenda Item 39.1

DATE: July 13, 2021

TO: Board of Supervisors

SUBMITTED BY: Robert W. Bash, Director of Internal Services/Chief Information Officer

SUBJECT: Amendments to the Solar and Energy Storage Energy Services Agreements with ForeFront Power for the Juvenile Justice Campus

RECOMMENDED ACTION(S):

- 1. Approve and authorize the Chairman to execute Amendment No. 1 to Energy Services Agreement-Solar No. 20-064 with FFP BTM Solar, LLC (“ForeFront Power”) to revise the construction start date and address liquidated damages with no change to the term of February 4, 2020 through February 3, 2045;**
- 2. Approve and authorize the Chairman execute Amended and Restated Energy Services Agreement-Energy Storage No. 20-065 with ForeFront Power to amend and restate the Original Special Conditions with no change to the term of February 4, 2020 through February 3, 2030; and**
- 3. Authorize the Director of Internal Services/Chief Information Officer to approve and execute extensions to the construction start dates for Agreements Nos. 20-064 and 20-065.**

There is no Net County Cost associated with the recommended actions. Approval of the recommended actions will amend both the solar and energy storage Energy Services Agreements (“ESA”) for the Juvenile Justice Campus (JJC). The recommended amendments extend the construction start dates for the project and address liquidated damages due to the County for the delays experienced by ForeFront Power (ForeFront) due to the pandemic. This item is countywide.

ALTERNATIVE ACTION(S):

Your Board could choose not to approve recommended actions one and/or two which would require the Internal Services Department to request payment for liquidated damages, cancel the agreements, and restart the process to acquire new projects. However, this would incur additional costs to prepare a request for proposal and may result with either the same or less favorable rates. Your Board could choose not to approve recommended action three, and require any extensions be brought back to your Board for approval.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. It is anticipated both agreements will result in savings from the reduction in energy costs. Both agreements require ForeFront to finance, design, construct, implement, operate, and maintain each system.

DISCUSSION:

On February 4, 2020, your Board approved ESA-Solar No. 20-064 and ESA-Energy Storage No. 20-065 with ForeFront. The solar ESA requires ForeFront to finance, design, construct, implement, operate, and maintain a solar photovoltaic system at the JJC from which the County would purchase and receive energy at specified, pre-negotiated power purchase agreement rates. The ESA-Energy Storage requires ForeFront to finance, design, construct, implement, operate, and maintain a battery storage system at the JJC that will reduce the County's peak electrical energy demand from PG&E, as well as electrically charge the system during off-peak hours and dispatch stored electric energy to the JJC during peak hours.

Shortly after execution of the ESA's, the COVID-19 pandemic occurred, and posed significant challenges to the planning, surveying, and permitting process. ForeFront remained in communication with Department staff and worked diligently to complete the pre-construction requirements to continue the project despite the difficulties caused by the pandemic.

Approval of the recommended actions will amend both ESA's and authorize the Department Director to approve and execute extensions to the construction start dates of up to 60 days for each ESA.

The ESA-Solar recommended amendment addresses and modifies the liquidated damages due to the County as a result of the failure of ForeFront to meet the construction start date due primarily to the pandemic. Those liquidated damages (\$125,662.50) would be due to the County.

The recommended amendment adds a clause excusing the County from making energy services payments to ForeFront for the first 90 days of energy services, following ForeFront receiving permission to operate from PG&E; these excused payments are valued between \$100,000 to \$150,000 depending upon when operation begins. However, the clause states that if ForeFront has still not started construction by the amended construction start date, the original liquidated damages provision shall apply. The amended construction start date will be no later than July 31, 2021, with an additional 60-day extension at the County's discretion. If the third recommended action is approved, the additional extension may be granted and executed by the Department Director.

The recommended amended and restated ESA-Energy Storage modifies the size of the storage system from 2,000 kW to 1,000 kW, a result of the County not being awarded Storage Equity Budget Self Generation Incentive Program (SGIP) incentives due to oversubscription by PG&E. ForeFront anticipates the County will be awarded Step 3 SGIPs. It also amends and reduces the minimum guaranteed demand reductions and energy arbitrage guarantee as applicable to the rate tariffs due to the smaller storage system and reduces the anticipated subsidy/rebate from \$0.40 to \$0.22 per watt/hour, to reflect the changed storage incentive. If the recommended amendment is approved, the early termination fee will also be amended, to reflect the smaller system size.

The recommended amended and restated ESA-Energy Storage also changes the guaranteed construction start date to December 31, 2022, assuming PG&E provides interconnection study results to ForeFront by March 31, 2022. The original interconnection agreement with PG&E did not include energy storage, and based on historical applications, both the Department and ForeFront anticipated PG&E would allow a revision to the interconnection agreement to include energy storage, which was not the case. PG&E now requires the completion of a study after the solar project receives permission to operate, and the County will need to enter into a new interconnection agreement with PG&E for energy storage. If those study results are not received by March 31, 2022, the guaranteed construction start date may be extended by the number of days that the study results are delayed by PG&E. The recommended amended and restated ESA-Energy Storage also allows the County to grant an additional 60-day extension at its discretion. If the third recommended action is approved, the additional extension may be granted and executed by the Department Director.

REFERENCE MATERIAL:

BAI #5, February 4, 2020

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Amendment No. 1 to ESA-Solar No. 20-064

On file with Clerk - Amended and Restated ESA-Energy Storage No. 20-065

CAO ANALYST:

Sonia M. De La Rosa