



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 5/15/2012

Report Type: Consent

Title: Supplemental Agreement: Solar at Sutter's Landing

Report ID: 2012-00416

Location: Sutter's Landing Regional Park , District 3 and Land Park , District 4

Recommendation: Pass a Motion: authorizing the City Manager or the City Manager's designee to execute the Second Amendment to City Agreement No. 2010-0913 to extend the term of the Exclusive Right to Negotiate a Lease with Conergy Projects, Inc. for an additional one year contingent upon Conergy Projects, Inc. securing a signed agreement for the Sacramento Municipal Utility District Simply Solar Grant.

Contact: Yvette Rincon, Sustainability Program Manager, (916) 808-5827, General Services Department

Presenter: None

Department: General Services Dept

Division: Office of the Director

Dept ID: 13001021

Attachments:

1-Description/Analysis

2-Exhibit A ERN Amendment

City Attorney Review

Approved as to Form
Janeth D. San Pedro
5/7/2012 12:12:09 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
4/30/2012 11:06:48 AM

Approvals/Acknowledgements

Department Director or Designee: Reina Schwartz - 5/1/2012 5:05:00 PM



Description/Analysis

Issue: On October 26, 2010, City Council adopted Resolution No. 2010-616 authorizing the City Manager to execute an Exclusive Right to Negotiate ("ERN") a ground lease to develop a solar farm on the 28th Street Landfill/Sutter's Landing Park with Conergy Projects, Inc. for an initial term of 120 days. Staff is no longer considering a solar farm at the 28th Street Landfill/Sutter's Landing Park. However, staff is considering a 1.5 megawatt solar project at Sutter's Landing Park which is contingent upon Conergy Projects, Inc. being awarded and signing an agreement with Sacramento Municipal Utility District (SMUD) for a \$1.6 million grant and a power purchase agreement (PPA).

Actual implementation of the project itself is contingent upon the environmental review and design and aesthetics of the project. The ERN is scheduled to expire on May 18, 2012; therefore, this report recommends an extension to the ERN contingent upon Conergy Projects, Inc. securing the SMUD grant and PPA.

Policy Considerations: Development of an aesthetically pleasing community-scale solar project at Sutter's Landing Park would provide for a public educational opportunity on solar. It also provides an opportunity for SMUD to purchase clean energy that will feed into the grid and be of use to the region.

Environmental Considerations:

California Environmental Quality Act (CEQA): The recommendation in this report will not result in a significant effect on the environment and is exempt from CEQA under CEQA Guidelines Section 15061(b)(3). CEQA review will be coordinated with project design, and any required CEQA documents will be completed and presented to City Council before it considers whether to approve a lease agreement.

Sustainability: Providing an educational and aesthetically pleasing community-scale solar project is consistent with the goals of the City's Sustainability Plan and the Climate Action Plan.

Commission/Committee Action: The project design submitted for the SMUD grant was presented to the Parks Commission on February 2, 2012. Members of the Parks Commission expressed concerns regarding the loss of park space and indicated that they would like to see revenue generated by the project directed to the Parks and Recreation Department to be used for development of Sutter's Landing Park.

Rationale for Recommendation: This report recommends a one-year extension of the ERN contingent on Conergy Projects, Inc. signing an agreement with SMUD for \$1.6 million grant and execution of a PPA with SMUD for 1.5 megawatts of solar at Sutter's Landing Park.

Financial Considerations: Approval of the extension of the Exclusive Right to negotiate a ground lease with Conergy Projects, Inc. will have no immediate financial impact.

Emerging Small Business Development (ESBD): No goods or services are being purchased as a result of this report.



SECOND AMENDMENT TO AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE A LEASE SOLAR PHOTOVOLTAIC FARM AT 28TH STREET LANDFILL

This SECOND AMENDMENT to City Agreement No. 2010-0913, Agreement for Exclusive Right to Negotiate a Ground Lease (“First Amendment”) is entered into as of _____, 2012, by and between the CITY OF SACRAMENTO, a municipal corporation (“CITY”) and Conergy Projects, Inc., a California corporation (“Conergy”). CITY and Conergy hereinafter may be referred to collectively as the “Parties” or in the singular as “Party”, as the context requires.

RECITALS

- A. On October 27, 2010, the Parties entered into City Agreement No. 2010-0913 for an Exclusive Right to Negotiate (“ERN”) a ground lease for the development and operation of a solar photovoltaic farm on the 28th Street Landfill.
- B. The ERN provided for an initial term of 120 days, with the option to extend the term for an additional three months. On February 11, 2011, the Parties agreed to extend the term until May 19, 2011.
- C. On March 25, 2011, the Parties agreed to extend the term of the ERN for another one year until May 19, 2012 to allow for completion of the negotiation process for a lease agreement, environmental review, and appraisal of the property by the City to determine the economic value of the land.
- D. Since that time, the scope of Conergy’s proposed solar project has evolved from a 20 megawatt solar farm to a 1.5 megawatt community-scale solar project on Sutter’s Landing Park (“Solar Project”). Conergy has submitted an application to receive grant funding from the Sacramento Municipal Utility District (“SMUD”) to assist in the development and construction of the Solar Project.
- E. The Parties desire to extend the term of the ERN to allow for: 1) the continued evaluation of the Solar Project, 2) award of grant funding from SMUD, 3) preparation of any necessary environmental site assessment reports, and 4) negotiation of business terms in regards to a ground lease between the Parties.

AGREEMENT

NOW, THEREFORE, based on the Recitals which are incorporated into this First Amendment, the mutual promises and covenants of the Parties contained in this First Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Extension of ERN. CITY hereby extends the term of the ERN for an additional one (1) year, until May 19, 2013. CITY’s extension of the term of the ERN shall not be effective unless and until the following conditions have been satisfied:
 - a. Conergy receiving grant funding from SMUD for the development and construction of the Solar Project.
 - b. Execution of a Power Purchase Agreement between SMUD and Conergy

2. Pre-Development Costs. Conergy shall bear all predevelopment costs related to the Solar Project, including, but not limited to, costs for planning, architectural, engineering, and legal services; any necessary entitlement expenses; costs associated with the environmental review of the Solar Project (including preparation of environmental studies and other related environmental documents and City staff review of such documents); and any necessary amendments to the 28th Street Landfill Final Closure Plan and the Park Master Plan as a result of the Solar Project.

3. Conergy shall reimburse the CITY for all costs associated with CITY's evaluation of the environmental plans and studies, including CITY's consultant costs to undertake such tasks.

4. Except as expressly modified by this Second Amendment, the ERN shall continue in full force and effect and according to its terms and conditions, and the CITY and Conergy hereby ratify and affirm all of their respective rights and obligations under the ERN.

5. Authority to Execute. The persons signing below represent that they have the authority to bind their respective Party.

6. Counterparts. This Second Amendment may be executed in one or more counterparts, and all of the counterparts shall constitute one and the same agreement, notwithstanding that the Parties hereto are not a signatory to the same or original counterpart.

IN WITNESS HEREOF, CITY and Conergy have executed this Second Amendment as of dates set forth below.

CITY OF SACRAMENTO

CONERGY PROJECTS, INC.

By: _____

By: _____

Date: _____

Date: _____

By: _____

APPROVE AS TO FORM:

Date: _____

City Attorney's Office

ATTEST:

City Clerk