



Council Agenda Report

From: Dick McKinley, Public Works Director

Subject: Amendment to SunEdison Agreements for Solar Power Projects

Date: January 17, 2017

Facts

1. On December 15, 2015, the City Council adopted a resolution selecting SunEdison as the City's solar power provider, and entered into a Power Purchase Agreement for three City sites, plus a site at the Airport.
2. The three City sites (Centennial Park, Sherwood Park, and City Hall) were all evaluated, and the City Hall site was removed from the list due to geo-technical reasons.
3. The Centennial Park and Sherwood Park sites were granted a Conditional Use Permit by the City Planning Commission on December 13, 2016 after the projects were sized to meet the power used at those two sites. Both sites will use solar panels mounted on covered-parking canopies, providing the added benefit of covered parking. The Sherwood canopy will be a bit smaller than originally conceived because it is limited by the power used in the meters serving that site (per the Federal rules governing this program).
4. The Airport was originally planned to be a 3.9 megawatt system, but has been increased to a 4.2 megawatt system to offset the loss of the City Hall site. The Airport site will use 23.6 acres of what has previously been used for farming, and sits north of Satellite Drive.
5. SunEdison went through a bankruptcy process and has arranged for Onyx Renewable Partners to take over SunEdison's position in the agreements, constructing the solar projects, owning them, and operating/maintaining them during the 20 years of the agreement. This amendment does four things: it recognizes Onyx; it recognizes that the City Hall site will not be used; it sets the dates for the projects to match the current timeline; and, it changes the rates to provide about \$340,000 in additional savings to the City over the 20 years of power production. The projects had been estimated to save the City about \$9.5 million over the 20 years in power costs.

Options

1. Do nothing.
2. Approve the proposed amendment and move forward with Onyx Renewable Partners as the solar power project provider for the next 20-plus years, and agreeing to a higher rate of cost savings.
3. Direct staff to go back and negotiate a different amendment.

Analysis and Conclusions

Doing nothing is not a viable option in this case, because failing to adopt an amendment to the power purchase agreement would mean that the solar power projects would be canceled.

The solar power projects will provide significant cost savings for the City over the next 20-plus years (estimated to be \$9.5 million over 20 years). The proposed amendment, which has been reviewed and approved by the City Attorney, would secure the projects by transferring the agreements to Onyx Renewable Partners, and would provide additional cost savings over the 20 years estimated at \$340,000. In addition, the solar projects will result in significant reductions in greenhouse gases for the City, helping

to meet the goals of the climate action plan. The projects at Sherwood Park and Centennial Park will provide the added benefit of covered parking for parks users. The project at the Airport has been situated in a way that will not interfere with aviation users, and is in an area that is not expected to have significant development in the next 20 years (as well as providing the Airport Fund with about \$750,000 in lease revenues over the next 20 years).

Fiscal Impact

The solar power projects require no investment from the City except staff time to negotiate the agreements and assist the projects in moving forward. The power provider (Onyx) will provide and install all of the equipment, operate and maintain all of the equipment, and sell the power to the City at an agreed-upon price that is significantly lower than the PG&E prices. The projects are estimated to save the City \$9.5 million in power costs over 20 years of operation, as well as an additional \$340,000 in savings realized through the proposed amendment. During this year's mid-year budget process, staff will return to the Council with options for using the anticipated savings.

Recommendation

1. Approve Resolution 17-xxxx to approve the proposed amendment and move forward with Onyx Renewable Partners as the solar power project provider for the next 20-plus years, thereby also agreeing to a higher rate of cost savings.
2. Authorize the City Attorney and the City Manager to make minor improvements in the agreement needed and consistent with overall Council direction.

Attachments

1. Resolution, including the proposed Amendment as Exhibit A

RESOLUTION NO. 17-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
AUTHORIZING THE CITY TO ENTER INTO AN AMENDMENT TO THE POWER
PURCHASE AGREEMENT WITH SUNEDISON, TRANSFERRING THE PROJECT TO ONYX
RENEWABLE PARTNERS, CHANGING THE PROJECT TIMELINE, REMOVING THE CITY
HALL SITE, AND INCREASING THE COST SAVINGS BY ABOUT \$340,000 OVER THE LIFE
OF THE PROJECT

WHEREAS, On December 15, 2015, the City Council adopted a resolution selecting SunEdison as the City's solar power provider, and entered into a Power Purchase Agreement for three City sites, plus a site at the Airport; and

WHEREAS, The three City sites (Centennial Park, Sherwood Park, and City Hall) were all evaluated, and the City Hall site was removed from the list due to geo-technical reasons; and

WHEREAS, The Centennial Park and Sherwood Park sites were granted a Conditional Use Permit by the City Planning Commission on December 13, 2016 after the projects were sized to meet the power used at those two sites. Both sites will use solar panels mounted on covered-parking canopies, providing the added benefit of covered parking. The Sherwood canopy will be a bit smaller than originally conceived because it is limited by the power used in the meters serving that site (per the Federal rules governing this program; and

WHEREAS, The Airport was originally planned to be a 3.9 megawatt system, but has been increased to a 4.2 megawatt system to offset the loss of the City Hall site. The Airport site will use 23.6 acres of what has previously been used for farming, and sits north of Satellite Drive; and,

WHEREAS, SunEdison went through a bankruptcy process and has arranged for Onyx Renewable Partners to take over SunEdison's position in the agreements, constructing the solar projects, owning them, and operating/maintaining them during the 20 years of the agreement. This amendment does four things: it recognizes Onyx; it recognizes that the City Hall site will not be used; it sets the dates for the projects to match the current timeline; and, it changes the rates to provide about \$340,000 in additional savings to the City over the 20 years of power production. The projects had been estimated to save the City about \$9.5 million over the 20 years in power costs.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. All of the above recitals are true and correct and incorporated herein by reference.

Section 2. The City Council hereby approves solar power Amendment in substantially the form attached hereto as Exhibit A, and incorporated herein by reference, and authorizes the City Manager to execute the Agreement, subject to any minor, technical, or non-substantive changes as approved by the City Manager and the City Attorney.

Section 3. The solar power projects and the resultant cost savings are part of the General Fund.

APPROVED this 7th day of February, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Steven W. Martin, Mayor

ATTEST:

Kristen L. Buxkemper, Deputy City Clerk

AMENDMENT AND AGREEMENT

THIS AMENDMENT AND AGREEMENT (this “Agreement”) is made as of February 7, 2017 (the “Effective Date”), by and among SunE Sunset Holdings 1, LLC (as assignee of SunEdison Government Solutions LLC), a Delaware limited liability company (“Provider”), the City of El Paso de Robles, a California municipal corporation (“PPA Counterparty”), and Onyx Renewable Partners L.P., a Delaware limited partnership (“Onyx”). Provider, PPA Counterparty and Onyx are sometimes collectively referred to in this Agreement as the “Parties” and each by itself a “Party”.

RECITALS

A. Provider and PPA Counterparty have entered into the agreements set forth in Annex A to this Agreement in connection with the design, construction and operation of photovoltaic electricity generation systems (“Systems”) and sale of electricity from such systems to the PPA Counterparty (all such agreements collectively, as amended, restated, supplemented or otherwise modified from time to time, the “Subject Agreements”);

B. On September 12, 2016, an affiliate of Onyx (“Onyx Affiliate”) purchased all of the outstanding membership interests in Provider;

C. Onyx Affiliate may (i) seek to assign the Subject Agreements in connection with debt, equity or tax equity financings relating to the Systems (such assignments, the “Financing Assignments”) and (ii) adjust specified equipment to be supplied under the Subject Agreements (“Equipment Adjustments”);

D. Provider and Onyx Affiliate therefore seek PPA Counterparty’s acknowledgement of and consent to (1) the Financing Assignments and (2) Equipment Adjustments, each as described in this Agreement; and

E. The Parties further wish to mutually terminate the City Hall project site

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Definitions.** Unless otherwise defined in this Agreement, capitalized terms used in this Agreement have the respective meanings ascribed to them in the Subject Agreements.

2. **Agreements.** Notwithstanding anything to the contrary in the Subject Agreements, the Parties hereby agree as follows:

2.1. Consents to Financing Assignments. Pursuant to the Subject Agreements, PPA Counterparty acknowledges and irrevocably consents that Provider (i) may finance the Systems with a combination of construction and/or long-term financing facilities, including

structured tax equity and/or securitization financings, and (ii) may assign (collaterally or directly) the Subject Agreements in connection with such financings or to any Affiliate of Provider or any Person succeeding to all or substantially all of the assets of Provider without PPA Counterparty's prior written consent; provided, that Onyx, an Affiliate of Onyx or an entity that has the appropriate experience and financial ability to operate and maintain photovoltaic solar systems manages (by contract with the assignee or otherwise) the day-to-day operation of the System(s).

2.2. Acknowledgment for System Operations. To the extent the Subject Agreements contain a reference to an "Affiliate of SunEdison, Inc." or a similar reference to an affiliate of Provider in connection with an obligation to perform day-to-day operation of the Systems, such language shall be interpreted to refer to the proviso in Section 2.1 above.

2.3. Consent to Equipment Adjustments. PPA Counterparty acknowledges and irrevocably consents that Provider may install and utilize the module and inverter equipment specified in the Subject Agreements or similar equipment as determined by Provider in its discretion consistent with prudent solar industry practice.

2.4. Mutual Termination of City Hall Project Site. The Parties agree that the Solar Power and Services Agreement, dated as of December 29, 2015, by and between Provider and PPA Counterparty for the City Hall project is hereby terminated due to a lack of viability based on findings from the geological investigation. The Parties agree that the system capacity at the Airport RES-BCT site will be increased in order to account for the loss of system capacity at the City Hall location. The solar system at the Airport RES-BCT site shall not exceed 4.0 MW AC.

2.5. Special Conditions. The Solar Power & Services Agreement Special Conditions ("Special Conditions") are hereby amended as follows:

2.5.1. Schedule 1 Solar System Size for the Airport (3401 Taxi Way) site shall read as follows: 5,275.00kW DC (representing an initial estimate, which may vary depending on the final design of the System.

2.5.2. Schedule 1 Construction Start Date for the Airport (3401 Taxi Way) site shall be replaced with the following: May 30, 2017

2.5.3. Schedule 1 Construction Start Date for the Centennial Park (600 Nickerson Drive) site shall be replaced with the following: April 30, 2017

2.5.4. Schedule 1 Construction Start Date for the Sherwood Park (1860 Creston Road) site shall be replaced with the following: April 15, 2017

2.5.4.1.1. The parties agree that the system size at the Sherwood Park Project will be reduced to approximately 76 kW DC. Schedule 1 to the Sherwood Park Solar Power & Services Agreement Special Conditions

will read as follows: 76 kW DC (representing an initial estimate, which may vary depending on the final design of the system).

2.5.5. Schedule 2 for the Airport (3401 Taxi Way) site shall be replaced with the following:

Year of System Term	kWh Rate[*] (\$/kWh)	Year of System Term	\$/kWh Rate[*] (\$/kWh)
1	.076	11	.076
2	.076	12	.076
3	.076	13	.076
4	.076	14	.076
5	.076	15	.076
6	.076	16	.076
7	.076	17	.076
8	.076	18	.076
9	.076	19	.076
10	.076	20	.076

*Calculated based on the year 1 kWh Rate multiplied by 0% inflation factor each year.

2.5.6. Schedule 2 for the Centennial Park (600 Nickerson Drive) site shall be replaced with the following:

Year of System Term	kWh Rate[*] (\$/kWh)	Year of System Term	\$/kWh Rate[*] (\$/kWh)
1	0.157	11	0.157
2	0.157	12	0.157
3	0.157	13	0.157
4	0.157	14	0.157
5	0.157	15	0.157
6	0.157	16	0.157
7	0.157	17	0.157
8	0.157	18	0.157
9	0.157	19	0.157
10	0.157	20	0.157

*Calculated based on the year 1 kWh Rate multiplied by 0% inflation factor each year.

2.5.7. Schedule 2 for the Sherwood Park (1420 Creston Road) site shall be replaced with the following:

Year of System Term	kWh Rate[*] (\$/kWh)	Year of System Term	\$/kWh Rate[*] (\$/kWh)
1	.133	11	.133
2	.133	12	.133
3	.133	13	.133
4	.133	14	.133
5	.133	15	.133

6	.133	16	.133
7	.133	17	.133
8	.133	18	.133
9	.133	19	.133
10	.133	20	.133

*Calculated based on the year 1 kWh Rate multiplied by 0% inflation factor each year.

3. No Modification to Subject Agreements. Other than the assignments, consents and acknowledgments described in this Agreement, nothing in this Agreement is intended to modify, alter or rescind any of the terms or provisions of the Subject Agreements.

4. Miscellaneous. This Agreement shall be governed by the laws of the jurisdiction set forth in the Subject Agreements, without regard to principles of conflicts of law. This Agreement shall inure to the benefit of and be binding upon each of the Parties and each of their respective successors and assigns. This Agreement may only be amended by a writing signed by all of the Parties. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement. Delivery of an executed counterpart of this Agreement electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Agreement. This Agreement constitutes the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior contracts, agreements or understandings with respect to the subject matter hereof, whether oral or written.

(Remainder of page left intentionally blank – Signature page to follow)

IN WITNESS WHEREOF, the Parties have each executed this Agreement as of the Effective Date.

**The City of El Paso de Robles,
a California municipal corporation**

By: _____

Name:

Title:

**SunE Sunset Holdings 1, LLC,
a Delaware limited liability company**

By: _____

Name:

Title:

**Onyx Renewable Partners L.P.,
a Delaware limited partnership**

By: _____

Name:

Title:

Annex A

1. General Terms and Conditions of Solar Power and Services Agreement, dated as of December 29, 2015, by and between SunE Sunset Holdings1, LLC (as assignee of SunEdison Government Solutions LLC) and the City of El Paso de Robles.
2. Solar Power and Services Agreement Special Conditions (Sherwood Park) dated as of December 29, 2015, by and between SunE Sunset Holdings1, LLC (as assignee of SunEdison Government Solutions LLC) and the City of El Paso de Robles.
3. Solar Power and Services Agreement Special Conditions (Centennial Park) dated as of December 29, 2015, by and between SunE Sunset Holdings1, LLC (as assignee of SunEdison Government Solutions LLC) and the City of El Paso de Robles.
4. Solar Power and Services Agreement Special Conditions (Airport RES-BCT) dated as of December 29, 2015, by and between SunE Sunset Holdings1, LLC (as assignee of SunEdison Government Solutions LLC) and the City of El Paso de Robles.