



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Ed Shikada

SUBJECT:

DATE: May 12, 2008

Approved

Christine J. Shyping

Date

5-16-08

COUNCIL DISTRICT: # 3

SUBJECT: APPROVAL OF A LEASE AGREEMENT WITH THE TECH MUSEUM OF INNOVATION FOR THE ROOF OF PARKSIDE HALL FOR THE PURPOSE OF INSTALLING A PHOTOVOLTAIC SYSTEM

RECOMMENDATION

- (a) Approval of a Lease Agreement Between the City of San José and the Tech Museum of Innovation for the use of Parkside Hall's roof and approval of City's consent to the sublease of Parkside hall's roof and the Tech Museum's roof to Solar Star for the purpose of constructing, installing, maintaining and operating a photovoltaic solar generation system; and
- (b) Adoption of a resolution authorizing the City Manager to consent to the assignment of Solar Star's rights and obligations under the sublease to a third party, if necessary, in order to finance the photovoltaic solar generation system.

OUTCOME

Approving this recommendation will result in a new Lease Agreement Between the City of San José and the Tech Museum of Innovation ("TMI") for the use of Parkside Hall's roof, which, with the City's consent, will be subleased to Solar Star resulting in the installation of a 185-kilowatt photovoltaic solar generation system that will provide power to the Tech Museum and allow for educational opportunities related to solar technology.

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BACKGROUND

TMI, a non-profit corporation, is partnering with the City of San José and Solar Star to install a 185-kilowatt photovoltaic solar generation system on the roofs of Parkside Hall and the Tech Museum to provide supplemental power to the Tech Museum.

TMI intends to enter into a 15 year Power Purchase Agreement (“PPA”) with Solar Star to purchase electrical energy generated by the solar photovoltaic system at a rate of 13.25 cents/kilowatt hour. TMI will use this system as part of its ongoing educational programming and will offer tours of the rooftop system, as well as live web cameras on the roof, and kiosks within the Tech Museum to illustrate the power production from the solar array. The solar panel portions of the system will be located on the Parkside Hall roof with the inverter system located on the roof of the Tech Museum. Both facilities are the property of the City of San José with the Tech Museum facility managed by TMI. Parkside Hall is managed by Team San José.

The Tech Museum opened its doors to the public on October 31, 1998. The facility was a project of the San José Redevelopment Agency that provided financing of \$50,021,081 with TMI providing an additional \$64,000,000. The 112,000-sq.ft. facility includes a 295-seat IMAX dome theatre along with exhibits, meeting spaces, gift shop and a food service venue.

The City’s current lease agreement with TMI is for a fifty-five (55) year period that commenced on July 11, 1994, and includes TMI’s use of the Tech Museum’s roof. Within the lease agreement the performance criteria requires the non-profit operator to develop, operate and maintain the facility in a manner that will enhance the City and best serve the needs of the community while providing the highest quality technology and science programming. TMI is also required to pay for all of its own utilities. As part of this recommendation, the City will consent to TMI’s subleasing of the Tech Museum’s roof to Solar Star for the construction, installation, maintenance, and operation of the photovoltaic solar generation system. None of the terms and conditions of the current lease with TMI will change and TMI will continue to be responsible for indemnifying the City for any losses arising from its use and operation of the Tech Museum, including any damage arising from Solar Star’s use of the Tech Museum’s roof, except for claims caused by City’s own negligence or willful misconduct. The Museum’s roof will host the inverter box which converts solar energy into electricity. The inverter box will be removed by TMI upon the expiration or earlier termination of the PPA.

The Lease Agreement with TMI for Parkside Hall’s roof will allow TMI to sublease the roof to Solar Star which, in turn, will construct, install, maintain, and operate the photovoltaic solar panels on the roof of Parkside Hall. The Lease Agreement between the City and TMI expires upon the expiration or earlier termination of the PPA which has a term of fifteen (15) years, with a one-time five year option which TMI may exercise at its discretion. In light of the environmental benefits associated with the installation of the system, the City has agreed that no rent will be charged to TMI for the use of Parkside Hall’s roof.

The photovoltaic system will be installed, constructed, maintained and operated at no cost to the City.

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TMI will provide Solar Star with access to both roofs as reasonably necessary to allow Solar Star to perform the installation work and to maintain the system as contemplated by the PPA, including ingress and egress rights to the roofs for Solar Star and its employees, contractors, and sub-contractors.

TMI and/or Solar Star, at their sole cost and expense, will obtain all City reviews and approvals, licenses and permits required for the construction and installation of the system before commencing work on the roofs.

Consistent with the City's current lease with TMI for the Tech Museum, TMI will indemnify and hold the City harmless against any claims arising out of Solar Star's use of Parkside Hall's roof, except for claims arising out of the City's own negligence or willful misconduct.

By the time TMI and Solar Star approached the City about entering into a lease for the roof of Parkside Hall, the parties had already negotiated the relevant business terms of the PPA. Accordingly, in order to be consistent with the terms and conditions of the parties' PPA, the Lease Agreement for Parkside Hall does not include prevailing wage provisions.

Solar Star has requested that the City sign a written acknowledgement in which the City consents to TMI subleasing both roofs to Solar Star. As part of City's consent, the City agrees to (i) the sublease; (ii) the grant of the right of way and the assignment of TMI's other rights under the Parkside Hall Lease and Museum Lease (collectively, "City's Leases") to allow Solar Star access to both roofs; (iii) the construction of the system on the roofs, and (iv) the maintenance, operation, cleaning, and repairing thereof, all subject to the terms and conditions of the City's leases with TMI.

Currently in the 10th year of operations, the Tech Museum is a cornerstone attraction within the downtown and has provided special events, blockbuster exhibits, meeting space, school programs and on-going opportunities for participation for the community, as well as gaining national and international attention for the Tech Museum and San José.

Solar Star and TMI have entered into a PPA that will allow TMI to benefit from lower electric bills and meaningful financial returns without any capital investment or maintenance costs. TMI will host the solar electric system on the roofs of Parkside Hall and TMI will purchase the electricity generated from the system at a fixed rate for the Tech Museum operation. This agreement will demonstrate TMI's environmental leadership while benefiting from clean, reliable solar power at rates that can be projected and anticipated in their budget process.

ANALYSIS

In October 2007 Mayor Reed launched his "Green Vision for San José" that included the goal to have the city receive 100% of its electricity needs from renewables, including solar. At a ceremony in October 2007 TMI's solar initiative was announced with SunPower as a partner noting that the project was planned to occur in 2008 with a 185-kilowatt system that produces

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enough energy to power 160 homes. SunPower developed Solar Star for the purpose of managing this project.

At the ceremony all parties, the City, TMI and SunPower expressed their support and excitement about the collaboration and the commitment to demonstrate the real advantages of alternative energy and to help San José achieve its "Green Vision."

SunPower Corporation, specifically for this transaction with the TMI, created Solar Star as an LLC, incorporated in the state of Delaware and registered in California. Solar Star's sole asset is the PPA. As SunPower determines the best way to finance the project, either through a third-party financier or self-financing, the ownership of Solar Star will be transferred to that entity. As part of the recommendation, the City Manager will be authorized to consent to any assignment of Solar Star's rights and obligations under the sublease to a third party in order to facilitate the financing of the project, if necessary.

Entering into the Lease Agreement with TMI for use of Parkside Hall's roof allows the non-profit to implement the solar project as planned on the roofs of Parkside Hall and the Tech Museum.

EVALUATION AND FOLLOW-UP

It is planned that TMI will include information in their annual reports regarding the results of the solar project and will also develop exhibits that illustrate how the system works including the resulting financial savings in utilities along with impacts to the community's green efforts. As the first of many solar roof projects on City owned buildings, this project will be monitored and evaluated by various City Departments.

POLICY ALTERNATIVES

Alternative #1: The City Council could reject the recommendation to approve the Lease Agreement with the Tech to for the use of the Parkside Hall roof and not give its consent to sublease to Solar Star both the Tech Museum and Parkside Hall roofs for a photovoltaic system.

Pros: Rejecting this recommendation will allow the current Lease Agreement to remain as is and will not add to TMI's current responsibilities under the existing Lease by adding this additional project and responsibility.

Cons: Rejecting this recommendation would result in a viable and cost effective solar related green initiative project to not occur; utility cost saving and educational opportunities would be lost.

Reason for not recommending: This is a valuable project that will be managed by a City non-profit partner organization and one that supports a key vision for the City to become a leader in

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green technologies and to also achieve the green vision goal for 100% electricity from renewables.

PUBLIC OUTREACH/INTEREST

TMI plans to create exhibits and interactive learning opportunities for the public.

COORDINATION

Public Works Department, Attorney's Office, Environmental Services Department, Office of Economic Development, San José Redevelopment Agency, Planning, Building and Code Enforcement Department, the Fire Department's Bureau of Fire Prevention and General Services have all participated in coordinating aspects of this project with Team San José participating as the Parkside Hall operator. In addition, the Tech Museum of Innovation, SunPower, Solar Star and PG&E along with their staff or agents working on their behalf have participated in the development of the various agreements, plans, and documents required for the implementation of the project.

BUDGET REFERENCE

Not applicable.

CEQA

Exemption File No. PP08-039 for installation of solar panels on the Parkside Hall roof and the electrical equipment known as an inverter on the Tech Museum roof deck.



ED SHIKADA
Deputy City Manager

For questions please contact Ed Shikada, Deputy City Manager, at (408) 535-8190.

