



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Scott P. Johnson  
John Stufflebean

**SUBJECT:** SEE BELOW

**DATE:** June 1, 2009

Approved

Date

4/8/09

**SUBJECT: REPORT ON REQUEST FOR PROPOSAL FOR A POWER PURCHASE  
AND SITE LEASE AGREEMENT FOR SOLAR PHOTOVOLTAIC POWER  
PRODUCTION**

## RECOMMENDATION

Accept this Report on the Request for Proposal for a Power Purchase and Site Lease Agreement for Solar Photovoltaic Power Production rejecting the sole proposal that was received and authorizing the City Manager to:

1. Enter into negotiations with SunPower Corporation (San Jose, CA) for a Power Purchase Agreement (PPA) to purchase solar energy for a maximum 25 year term.
2. Present to Council a fully negotiated PPA for final review and approval after successful negotiation of the agreement.

## OUTCOME

To further the City's Green Vision Goal #3 "Receive 100% of our electrical power from clean renewable sources."

## BACKGROUND

The City's comprehensive "Green Vision" strategy was adopted in 2007 to show the world how environmental responsibility makes financial sense and stimulates economic opportunity. The ten bold Green Vision goals listed below serve as a roadmap to reduce the carbon footprint of the tenth largest city in the nation by more than half.



Within 15 years, the City of San José, in tandem with its residents and businesses, will:

- Create 25,000 Clean Tech jobs as the World Center of Clean Tech Innovation
- Reduce per capita energy use by 50 percent
- Receive 100 percent of our electrical power from clean renewable sources
- Build or retrofit 50 million square feet of green buildings
- Divert 100 percent of the waste from our landfill and convert waste to energy
- Recycle or beneficially reuse 100 percent of our wastewater (100 million gallons per day)
- Adopt a General Plan with measurable standards for sustainable development
- Ensure that 100 percent of public fleet vehicles run on alternative fuels
- Plant 100,000 new trees and replace 100 percent of our streetlights with smart, zero emission lighting
- Create 100 miles of interconnected trails

By implementing these goals, the City will lead the nation in becoming more energy efficient, producing and using electricity from clean renewable sources, creating green buildings, diverting waste from landfills, creating greener street systems, delivering recycled water, and reducing greenhouse gas emissions.

Solar power is a renewable resource that the City can use to reduce fossil-fuel use and greenhouse gases from fossil combustion. The Mayor and Council have directed that solar power projects be developed to demonstrate the efficacy of the technology and to encourage residential, business, and commercial entities to install solar photovoltaic (PV) projects. Solar can be installed on municipal facilities through a number of mechanisms in the future including but not limited to additional Requests for Proposals (RFPs) for Power Purchase Agreements (PPAs), City Council Policy 0-40, Framework for Establishing Demonstration Partnerships, standard public work contracts for installation of PV systems, and RFPs for Design-Build contracts for installation of PV systems.

A Request for Proposal (RFP) was developed with the objective of soliciting proposals for the design and construction of at least 1.25 Mega Watts (MW) of solar photovoltaic arrays at the City's Mabury (0.25 MW) and Central (1 MW) Service Yards. The systems would be designed, built, owned and operated by the contractor. In return, the City would agree to lease the sites space at no cost and to purchase the energy produced by these systems at a pre-determined cost for up to 25 years using a Site Lease Agreement (SLA) and Power Purchase Agreement (PPA). This RFP was designed to incorporate lessons learned from a prior RFP for the Airport, which did not result in award of an agreement, and to establish a template to be used for other City facilities.

## **ANALYSIS**

On February 27, 2009, the City released a Request for Proposal (RFP) for a Power Purchase and Site Lease Agreement for Solar Photovoltaic Power Production at the Mabury and Central

Service Yards. Supplier interest in the requirement was high, with over 75 companies viewing the RFP. Thirty companies attended the Pre-Proposal Conference and site walk-through. One proposal was received from SunPower Corporation by the April 13, 2009 deadline. Unfortunately, the proposal did not meet one of the minimum qualifications, which required that the Mabury site produce at least 250 KW. Therefore, staff rejected SunPower's proposal for not meeting this technical minimum.

Staff followed up with several companies that actively participated in the RFP process to understand the reasons that they did not submit proposals. The following is a summary of the key reasons that these companies provided:

- All of the companies expressed concerns that the City's appropriation language was very one sided, too restrictive, and "did not recognize the needs of a PPA provider". This clause, which is in all municipal contracts statewide, makes future payments on the contract subject to Council's appropriation of funds. The companies reported that banks are not willing to provide the capital to construct the project without a secure payment stream over the life of the PPA, which can be up to 25 years. The appropriations requirement has become a greater issue with the recent tightening of the financial markets.
- Several firms stated that the indemnification clause was too one sided and recommended that the City consider a mutual indemnification clause in future PPAs.
- One firm said the "termination for convenience (suspension)" clause was not reasonable.
- Several companies stated that the \$416,000 upfront payment required of the recommended awardee as bid security and pre-payment for Public Works costs associated with the construction phase was not acceptable. Although companies understood that this was to reimburse the City for actual costs incurred, they wanted clearer language to cap the cost, make the payment refundable in the event that the PPA could not be successfully negotiated in good faith, and require the payment at the time the service is performed by the City instead of a pre-payment.

It should be noted that the City did amend the PPA language during the RFP process to address these concerns as they were raised by the proposers. All of the companies that staff debriefed acknowledged these changes but said that these changes were not sufficient for submission of proposals in response to the RFP. In addition, they stated that, at this time, the credit market is very cautious and no longer willing to accept risks that were acceptable in the past and, therefore, the City must take a more flexible stance on its willingness to negotiate a PPA.

Notwithstanding SunPower's failure to meet the 250 KW minimum at the Mabury Yard , staff determined that SunPower's proposal offered significant benefits to the City and, therefore, warranted further discussions. In particular, SunPower's proposed initial energy price was 19.875 cents per kWh which compares very favorably to other public PPAs where the unit price for energy ranged from 23.5 to 32 cents per kWh with annual escalators ranging from 2.5% to 5%. This compares to a current price for the purchase of power from PG&E of approximately 15

cents per kWh, and PG&E's rates have increased an average of 6.8% per year over the past 34 years.

The RFP allowed proposers to take limited exceptions to the Power Purchase Agreement (PPA) and Site Lease Agreement (SLA). SunPower's proposal was contingent on successfully negotiating a PPA with the City and they identified the following specific areas for further negotiations:

- SunPower's agreement to accept the City's appropriation language is contingent upon negotiating a stipulated loss value that would be payable by the City in the event that the Council fails to appropriate funding for power purchase payments to SunPower. A stipulated loss provision is different than a buyout provision. Under a buyout provision, the City would have the option, but not the obligation, to purchase the system at specified point in time. Having a stipulated loss provision will require the City to appropriate and encumber the amount of the stipulated loss value upon execution of the agreement.
- In the event of termination for convenience, the contractor may be reimbursed for reasonable costs. SunPower would like to negotiate a definition of what constitutes "reasonable".
- The City requires that the contractor reimburses the City for \$408,194 of City costs that covers the City's time for required permitting and inspection that will be incurred during the construction phase of the project. SunPower has requested a breakdown of these costs with a cap to ensure greater predictability for financiers.

Based upon the experience of this RFP and the prior Airport RFP, it is apparent that the City's expectations of proposers are not in alignment with the current state of this marketplace. As such, staff would like to use this opportunity to enter into direct negotiations with a service provider in order to develop an agreement that can meet the needs of both parties. Once finalized, this agreement can form the template for future power purchase agreements for other City facilities. This will streamline and ensure the success of future RFP efforts.

Therefore, staff is requesting authority to negotiate with SunPower, subject to the receipt of a proposed buyout schedule from Sun Power. Staff is recommending that a proposed buyout schedule be requested prior to the commencement of negotiations so that an analysis can be performed to determine whether it is more cost-effective for the City to finance the purchase and installation and maintain solar photovoltaic arrays and related equipment on its facilities. Based on this analysis, staff will evaluate the financing strategy that is in the City's best interest.

If SunPower and City staff have not developed a final agreement for presentation to Council within 120 days, then staff will cease negotiations with SunPower and proceed with alternative methods for the installation of solar power generation equipment.

Section 4.12.350 of the Municipal Code allows the procurement authority to negotiate and execute an agreement without further solicitation provided Council approves the action.

### **EVALUATION AND FOLLOW-UP**

Staff will report to Council on the results of the negotiation and request consideration for approval of the agreement and any necessary funding after successfully negotiating an agreement.

### **POLICY ALTERNATIVES**

*Alternative #1: Do not approve Staff's recommendation and issue a new Request for Proposal.*

**Pros:** Potential for more competition if multiple proposals are received.

**Cons:** This process can be time consuming with no guarantee that more proposals will be submitted as part of the process.

**Reason for not recommending:** The issue with the City's appropriation language has not been addressed and the financial markets remain very conservative. Therefore, there would be no reason to believe that a new RFP would benefit the City at this time.

### **PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater; **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, this memorandum will be posted on the Council Agenda for June 16, 2009.

### **COORDINATION**

This memorandum has been coordinated with the City Manager's Office and the City Attorney's Office.



June 1, 2009

**Subject:** Report on Request for Proposal for A Power Purchase and Site Lease Agreement

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**FISCAL/POLICY ALIGNMENT**

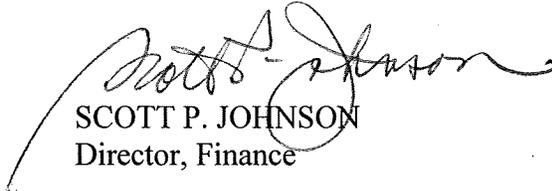
This action is consistent with the Green Vision and the General Budget Principle; "We must focus on protecting our vital core city services for both the short- and long-term".

**BUDGET REFERENCE**

Not applicable.

**CEQA**

Not a project.

  
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Director, Environmental Services

For questions please contact Walter C. Rossmann, Chief Purchasing Officer at (408) 535-7051.

