COUNCIL AGENDA: 8/25/26
FILE: 26-871
ITEM: 3.4

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO:	HONORABLE MAYOR AND CITY COUNCIL	**FROM:**	Matt Loesch
SUBJECT:	**See Below**	**DATE:**	August 3, 2026

Approved | Date: 8/11/26

COUNCIL DISTRICT: 10

SUBJECT: **Grant of Franchise to Tokay Energy Storage 1, LLC for Electric Services for Public Rights-of-Way**

RECOMMENDATION

(a) Adopt a resolution authorizing the City Manager, or her designee, to negotiate and execute a Memorandum of Understanding to secure a performance and partnership agreement and a Community Benefit Agreement.

(b) Conduct a Public Hearing and approve an ordinance granting a franchise to Tokay Energy Storage 1, LLC for the purpose of transmitting electric service in the City's public rights-of-way.

SUMMARY AND OUTCOME

Conduct a public hearing for the approval of an ordinance to grant a franchise to Tokay Energy Storage 1, LLC, (Tokay), a subsidiary of New Leaf Energy, Inc., for the installation and construction of electric interconnection and transmission facilities and appurtenances within the City's public rights-of-way on Santa Teresa Boulevard and Martinvale Lane connecting Tokay's approximately 100-megawatt (MW) battery energy storage facilities located at 6150 San Ignacio Avenue to the existing PG&E Santa Teresa Substation (see Attachment A – Project Map).

Adoption of the resolution will enable the City Manager, or her designee, to negotiate and execute a Memorandum of Understanding and a Community Benefit Agreement (CBA) with Tokay. Together the documents outline a shared commitment to partner on innovative opportunities, including climate action technologies and climate resiliency options, and provide defined community benefits, including enhanced tax revenues and emergency response funding.

BACKGROUND

Electric battery storage systems are a critical component of California's transition to clean energy. As the State of California accelerates renewable energy integration, large-scale battery storage facilities provide the grid flexibility necessary to balance variable generation sources and maintain reliability across the broader Bay Area electric system.

The Tokay Energy Storage project will construct an approximately 100 MW battery energy storage facility on a 5.5-acre site at 6150 San Ignacio Avenue in south San José. The project includes the installation of four 8-inch and two 4-inch underground electric interconnection conduits running approximately 1.3 miles (6,864 linear feet) along Santa Teresa Boulevard and Martinvale Lane connecting the facility to the existing PG&E Santa Teresa Substation. The conduits will be installed underground within the public rights-of-way, consistent with the City's requirements for below-grade utility infrastructure.

The City has previously granted a franchise in 2020 for a similar battery energy storage interconnection to Hummingbird Energy Storage, LLC for a project along Monterey Road to the PG&E Metcalf Substation. The Tokay franchise builds directly on that precedent, while updating the compensation structure to reflect current market conditions and incorporating an Infrastructure Capacity Adjustment and community benefits not included in the previously granted franchise.

ANALYSIS

As required by Chapter 15.32.030 of the San José Municipal Code, Tokay submitted an application for franchise on June 30, 2026.

Under Article XIII of the San José City Charter, the City Council is empowered to grant a franchise by ordinance for the purpose of furnishing the city or its inhabitants with water, light, heat, and gas, etc., or any other public utility or service using or proposing to use any public street, way, alley, or place in the city. Subject to the provisions of Article XIII of the San José City Charter, the City Council may grant a franchise pursuant to procedures prescribed by ordinance or by state law.

Chapter 15.32 of the San José Municipal Code establishes the City’s exclusive procedures for granting gas and electric franchises including the procedure by which the City may grant a franchise to construct or use poles, wires, conduits, and appurtenances for the transmission and distribution of electricity.

As outlined in Chapter 15.32.040 of the San José Municipal Code, the City Council may pass a resolution declaring its intention to grant the proposed franchise. The City

Council must then consider any objections to the granting of the franchise at a public hearing, which shall be set for a fixed time not less than 10 days or more than 25 days after the date of the adoption of said resolution.

On August 11, 2026, City Council adopted the resolution, declaring its intention to grant the proposed franchise ordinance and scheduled the public hearing and the City Council's final consideration on August 25, 2026. Any interested person may make a written protest stating objections against the granting of the franchise. All protests shall be signed by the protestor and be mailed or delivered to the City Clerk at 200 E. Santa Clara Street, 14th floor, San José, CA 95113, no later than 12 p.m. on August 25, 2026. At the time set for the hearing, which is during the regular City Council meeting, the City Council shall hear all objections and pass upon all protests made and its decision shall be final and conclusive.

Staff recommend a franchise term consisting of an initial 10-year term that automatically renews for one additional 10-year term and a final five-year term, for a maximum franchise duration of 25 years. This approach preserves the City's standard 10-year renewal cycle while accommodating the franchisee's requested 25-year maximum term. The proposed franchise sets forth various requirements for construction, operation and maintenance of Tokay's project, including insurance, bonds, and indemnification requirements. The franchise will not become effective until Tokay executes a CBA with the City. In addition, a Memorandum of Understanding will outline a shared commitment between Tokay and the City to partner on innovative or pilot project opportunities that may arise during the franchise term, including climate action technologies and climate resiliency options.

Staff's analysis of the proposed franchise is organized around four key findings:

Finding 1: Continuity With Existing Franchise Practice

The proposed franchise maintains the City's established approach of compensating the public for the use of public rights-of-way through a linear-footage occupancy model, consistent with prior battery energy storage franchise agreement, while updating the linear-footage rates to better reflect today's market conditions. To verify that the new rates are reasonable, staff benchmarked them against the rates from three comparable franchise examples: the County of Los Angeles, the City of Carson, and the City's own prior battery energy storage franchise with Hummingbird Energy Storage, LLC along the Monterey Road corridor.

The linear-footage component of the proposed franchise for the approximately 1.3 miles of underground conduit along Santa Teresa Boulevard and Martinvale Lane totals $29,927. This amount falls squarely within the range established by the comparable jurisdictions, above the outdated prior franchise rate and consistent with current regional market practice. A detailed calculation breakdown, including conduit dimensions, cross-sectional areas, and fee calculations for each comparable, is provided in Attachment B - Franchise Fee Comparable Analysis.

Finding 2: Modernization Through Infrastructure Capacity Adjustment

Battery energy storage facilities provide a fundamentally different type of infrastructure value than traditional pipeline occupancy. The capacity they provide to the electric grid, measured in MW available for resource adequacy, represents a form of public benefit that is distinct from, and not captured by, simple physical occupancy. The ability to store and dispatch up to 100 MW of electricity on demand has real, measurable value to the reliability of the regional electric grid.

To reflect this distinction, the proposed franchise introduces an Infrastructure Capacity Adjustment, a new annual fee component calculated using the California Public Utilities Commission Local Resource Adequacy Market Price Benchmark for PG&E, published each October by the California Public Utilities Commission. This independently established benchmark reflects the market value of electric capacity available to support grid reliability. The Infrastructure Capacity Adjustment is not based on project revenues, profitability, electricity sales, or customer rates. Instead, it provides an objective, transparent adjustment reflecting the scale of infrastructure enabled by the franchise. This framework is scalable and can be applied consistently to future battery energy storage projects in San José, providing developers clear and predictable expectations when evaluating the city as a project location.

The Infrastructure Capacity Adjustment solely based on Tokay's scale of grid capacity that the project makes available, in this case, 100 MW, applied at modest percentage rates structured across two tiers. The tiered structure applies a lower rate (0.1%) to the project's baseline capacity (0-50 MW) and a higher rate (0.25%) to the upper range of its footprint (50-100 MW), consistent with the principle that larger facilities providing greater grid benefit should contribute proportionally more. Using the 2025 California Public Utilities Commission benchmark values, the combined Infrastructure Capacity Adjustment is projected to be $25,662 annually. Detailed calculations are provided in Attachment C - Infrastructure Capacity Adjustment Calculations.

Finding 3: Community Benefit Commitments

In addition to franchise fee compensation, the franchise includes a commitment by Tokay to execute a CBA. Execution of the CBA between Tokay and the City is a condition precedent of the franchise taking effect. The CBA shall be executed by October 15, 2026.

The CBA includes the following commitments:

- Sales Tax Covenant: During the term of the CBA (15 years from project approval), Tokay will use commercially reasonable efforts to maximize the total amount of local sales and use tax revenue received by the City from construction and development of the project, including purchases made by third-party contractors. Battery energy storage projects involve significant procurement of equipment and materials. A meaningful share of those purchases can generate local sales tax receipts for the City's General Fund, but only if the developer structures its procurement accordingly. This covenant ensures Tokay is actively working to direct that benefit to San José rather than allowing it to accrue elsewhere by default.

- <u>Emergency Response Equipment Fund</u>: Within 90 days of the project receiving all permits necessary for commencement of operation, Tokay will make a one-time $100,000 contribution to the City Fire Department's Emergency Response Equipment Fund for specialized equipment related to battery storage emergency response.

This contribution addresses a real and specific public safety need. Lithium-ion battery fires behave fundamentally differently from conventional electrical fires. They can reignite hours or days after initial suppression, require far greater volumes of water, and may release toxic gases that demand specialized protective equipment. Standard fire department readiness protocols are not designed for these scenarios. The $100,000 contribution will help ensure that San José firefighters have the equipment and training necessary to respond effectively should an incident occur at this facility or at future battery storage sites in the City.

<u>Finding 4: Full Public Benefit Package</u>

Individually, each component of this franchise, the linear-footage fee, the Infrastructure Capacity Adjustment, and the CBA, represents a meaningful improvement over prior battery energy storage franchise agreements. Together, they provide considerable community value and build a framework of predictability that encourages future battery storage developments in San José.

The total estimated annual franchise compensation of $55,589 better reflects the modern grid market reality. The $100,000 Fire Department contribution addresses an equipment and training gap that will only grow as more battery storage facilities come online in San José. The sales tax covenant ensures the City captures construction-phase tax revenue that might otherwise be lost. In addition, the property tax growth associated with Tokay's improvements to the project site will provide additional ongoing benefit to the City's tax base.

Taken together:

- $55,589 estimated annual franchise compensation, combining the linear-footage fee and the Infrastructure Capacity Adjustment, both updated and indexed to objective published benchmarks;

- $100,000 one-time Fire Department contribution for battery storage emergency response preparedness;
- A binding sales tax covenant ensuring commercially reasonable efforts to maximize San José's share of construction-phase sales and use tax receipts;
- Anticipated property tax growth from improvements to the project site.

The proposed franchise agreement maintains the City's historical franchise structure while incorporating objective market benchmarks and securing community benefits associated with a modern battery energy storage facility. The findings above provide considerable community benefit and establishes greater predictability for future battery energy storage developers to select San José for their next project, making clear that the City has a fair, transparent, and well-reasoned framework in place for projects of this type.

EVALUATION AND FOLLOW-UP

Under Section 604 of the City Charter, the City Clerk must publish the title of the ordinance granting the franchise after six days have passed following the City Council's approval on August 25, 2026. The ordinance will return to the City Council on September 15, 2026, for final adoption on the Consent Calendar. If the City Council approves the ordinance at that time, it will be considered formally adopted. Under Section 605 of the City Charter, an adopted ordinance becomes effective 30 days after final adoption. Based on the anticipated September 15, 2026 adoption date, the ordinance will take effect on October 15, 2026. The franchise agreement becomes effective on October 15, 2026.

FISCAL IMPACTS

Tokay will pay the City an annual franchise fee consisting of two components: (1) a linear-footage component of $29,927 based on the per-lineal-foot rate schedule in the proposed franchise ordinance; and (2) a tiered Infrastructure Capacity Adjustment of $25,662 annually. The tiered structure applies a modest rate to baseline capacity while capturing greater value from the upper range of the facility's 100 MW footprint. Combined, the estimated total annual franchise compensation is $55,589.

In addition, Tokay's one-time $100,000 Emergency Response Equipment Fund contribution will support the San José Fire Department's readiness for battery storage emergencies. Sales and use tax revenue generated during construction is not estimated at this time but is expected to provide meaningful benefit to the City's General Fund, subject to Tokay's commercially reasonable efforts covenant in the CBA.

Under the franchise agreement, Tokay will remit payments within 60 days after the end of each calendar year. Substantial franchise fee revenue is not expected to be received until the project becomes operational. Construction is expected to begin in late 2027 with project operation tentatively anticipated by 2029. Franchise fee revenue will be deposited in the City's General Fund.

COORDINATION

This memorandum was coordinated with the City Attorney's Office, City Manager's Budget Office, City Manager's Office of Economic Development and Cultural Affairs, Energy Department, Environmental Services Department, Fire Department, and the Planning, Building, and Code Enforcement Department.

PUBLIC OUTREACH

This memorandum will be posted on the City Council Agenda website for the August 25, 2026 City Council meeting.

BOARD, COMMISSION, COMMITTEE RECOMMENDATION AND INPUT

No board, commission, or committee recommendation or input is associated with this action.

CEQA

Community Plan Exemption, File No. CP24-015, CEQA Guidelines Section 15183, Projects Consistent with a Community Plan or Zoning.

PUBLIC SUBSIDY REPORTING

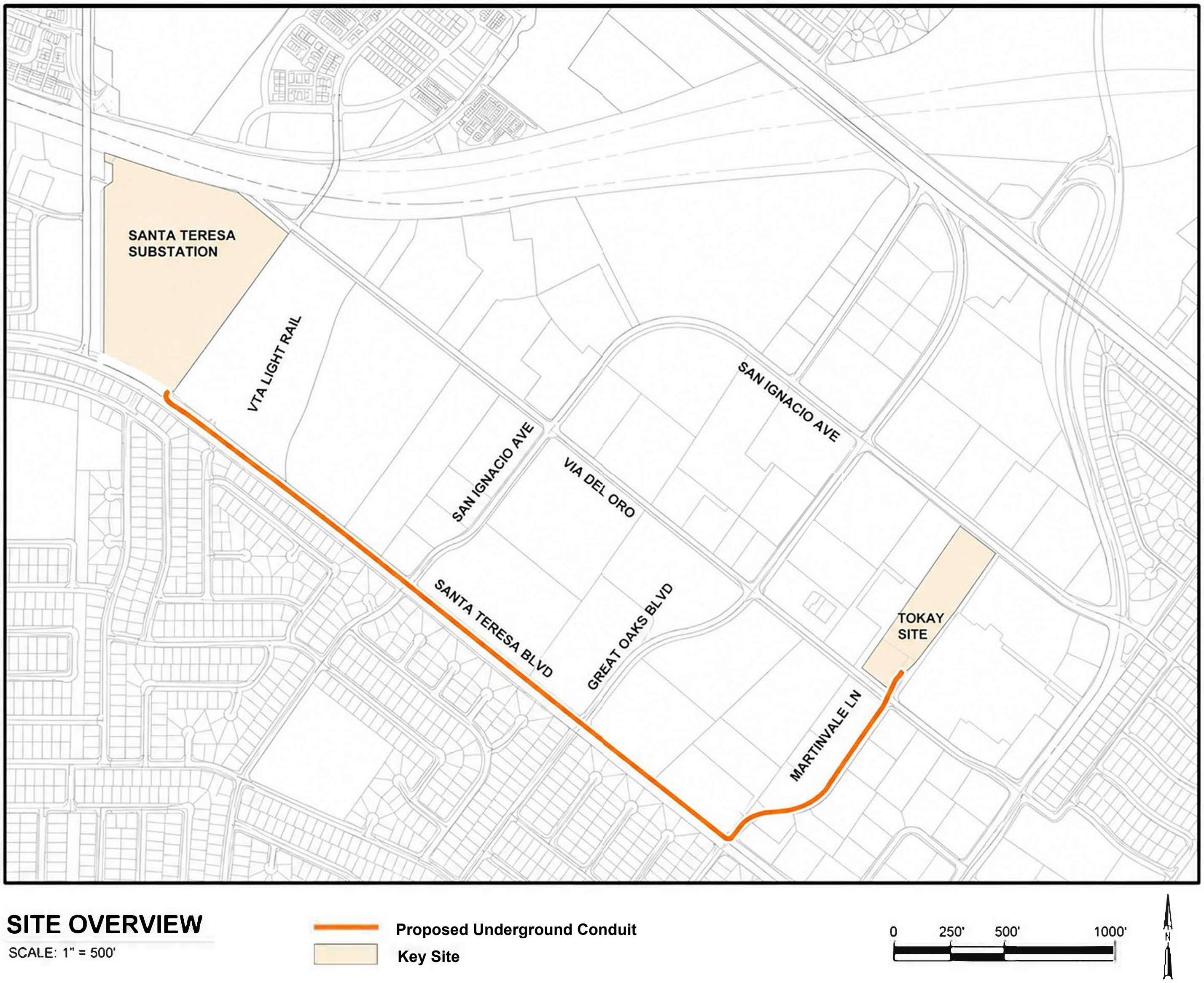
This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/
MATT LOESCH
Director of Public Works

For questions, please contact J. Guevara, Deputy Director, Public Works Department, at j.guevara@sanjoseca.gov or (408) 535-8300.

ATTACHMENTS:
Attachment A – Project Map
Attachment B – Franchise Fee Comparable Analysis
Attachment C – Infrastructure Capacity Adjustment Calculations

Attachment A - Project Map



Attachment B: Franchise Fee Comparable Analysis

Project Conduit Configuration				
Conduit	Conduit Quantity	Diameter	Cross-Sectional Area (each) sq ft	Combined Area sq ft
Power conduits	4	8 inches	0.349	1.396
Signal/comm conduits	2	2 inches	0.022	0.044
Total				**1.44**

Gen-tie length: approximately 1.3 miles (6,864 linear feet)

Franchise Fee Comparable Analysis					
Jurisdiction	Rate	Source	Calculation	Annual Fee	Additional Notes
County of Los Angeles	$2.10 per cubic foot (annually)	LA County E&B Natural Resource Management Corportation Franchise Agreement	1.44 sq ft × 6,864 LF × $2.10/cu ft	**$20,757**	$10,000 (one-time upfront granting fee)
City of Carson	$3.29/LF (2018 rate $2.56 CPI-adjusted)	Carson City Municipal Code	1.44 sq ft × 6,864 LF × $3.29/cu ft	**$32,529**	$9,674 (one-time upfront granting fee)
City of San José	$0.228/ LF of 8" Conduit $0.114/ LF of 4" Conduit	City of San José Hummingbird Energy Storage, LLC Franchise	(6,864 LF × $0.228/ LF 8" × 4 conduits) + (6,864 LF × $0.114/ LF 4" ×2 conduits)	**$7,825**	Legacy pipeline-style per-LF schedule; The rate for 4" diameter conduits is the smallest diameter provided and was used as a proxy to calculate the 2" diameter conduit fee.

Proposed Tokay Linear Footage Fee					
Conduit	Quantity	Rate ($/LF)	Length (LF)	Annual Fee Calculation	Annual Fee Total
8-inch conduits	4	$0.92	6,864	4 × $0.918 × 6,864	$25,204.61
4-inch conduits (proxy for 2-inch conduits)	2	$0.34	6,864	2 × $0.344 × 6,864	$4,722.43
Total					**$29,927.04**

Summary Comparison	
Jurisdiction	Annual LF Fee
Prior San José BESS Franchise	$7,825.00
Los Angeles County	$20,757.00
City of Carson (CPI-adjusted)	$32,529.00
Tokay (Proposed)	$2,927.04

Attachment C - Infrastructure Capacity Adjustment Calculations

Formula: CPUC Market Price Benchmark for PG&E Local Resource Adequacy × Tier MW × 1,000 kW/MW × 12 months × Tier Adjustment Percentage

2025 Benchmark Value: $12.22/kW-month (Published October 2025; updated annually each October by CPUC)

Tier	Capacity Range	Adjustment %	Calculation	Annual Amount
Tier 1	0 – 50 MW	0.10%	$12.22 × 50MW × 1,000 kW/MW × 12 × 0.001	$7,332
Tier 2	51 – 100 MW	0.25%	$12.22 × 50MW × 1,000 kW/MW × 12 × 0.025	$18,330
Total				**$25,662**