



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Lori Mitchell

**SUBJECT: LONG-TERM RENEWABLE
ENERGY AGREEMENT WITH
SUN POND**

DATE: October 23, 2023

Approved

Date

10/10/23

RECOMMENDATION

Adopt a resolution authorizing the Director of the Department of Energy or the Director’s designee to negotiate and execute a long-term agreement with Sun Pond, LLC, a subsidiary of Longroad Development Company, LLC, to buy renewable energy, renewable energy credits, resource adequacy, battery tolling rights and attributes associated with a solar photovoltaic, and battery storage facility for a term of 20 years beginning 2026 through 2046, in an estimated annual amount of \$11,566,000 and a not-to-exceed amount of \$231,320,000 in aggregate, to be paid solely from the San José Clean Energy Operating Fund and subject to the annual appropriation of funds; the terms of this resolution superseding Section (c) of Resolution No. RES2023-9.

SUMMARY AND OUTCOME

This memorandum requests adoption of a resolution to a change of the authority granted by City Council in January 2023 to the Director of the Department of Energy to enter a long-term agreement with Sun Pond, LLC (Sun Pond) for a new solar plus battery storage project to serve customers of San José Clean Energy (SJCE). Since City Council approval of the agreement in January, staff of the Energy Department continued to negotiate with Sun Pond but have not yet executed an agreement with Sun Pond. Updated authority is now needed due to an increase in the total cost of the agreement, from \$225,200,000 to \$231,320,000, and a delay in the commercial online date, which was originally scheduled for 2025 and now is scheduled for 2026. (For further information, see **Attachment** – Summary of Material Terms for the Agreement with Sun Pond.) The increase in cost is related to a clarification of the billing determinants for the project as negotiations continued and increasing long-term renewable power contract prices. The delay is related to longer than expected lead times for obtaining critical equipment.

All other commercial details of the deal presented to City Council in January 2023 remain the same. Approving the recommendation to negotiate and execute the agreement with this amendment will contribute towards the Energy Department achieving California Public Utilities Commission procurement requirements in year 2026 for SJCE. The agreement will also add resources identified as needed to achieve local climate goals in SJCE's 2022 integrated resource planning process.

BACKGROUND

Previous City Council Authority

On January 24, 2023, the City Council adopted Resolution No. RES2023-9¹ authorizing the Director of the Department of Energy or the Director's designee to negotiate and execute four agreements, including in Section (c), an agreement with Sun Pond with a not-to-exceed amount of \$225,200,000 for the term 2025 through 2045.

Risk Oversight Committee Review

On October 5, 2023, the City Manager's Risk Oversight Committee recommended that the Energy Department submit, to City Council for approval, a resolution to change the authority granted by City Council on January 24, 2023 to add \$6,120,000 to the not-to-exceed amount and to delay the in-service date to 2026.

ANALYSIS

Benefits of the Agreement

Longroad's subsidiary, Sun Pond, is building a new utility-scale solar photovoltaic facility with a four-hour electric battery storage project in Maricopa County, Arizona. Longroad was founded in 2016 and focuses primarily on the development and operation of utility-scale wind, solar, and battery energy storage projects throughout the United States. It has successfully brought 1.9 gigawatts of solar projects online in recent years. Longroad is not a publicly traded company.

Project Terms

Estimated annual cost: \$11,566,000

Maximum total contract cost: \$231,320,000

Term: 20 years

Expected Commercial online date: 2026

¹ <https://records.sanjoseca.gov/Resolutions/RES2023-9.pdf>

The agreement with Sun Pond will contribute towards SJCE's ability to meet California Public Utilities Commission procurement requirements and provide SJCE renewable energy, resource adequacy, and dispatchable batteries. The agreement will allow the Energy Department to make progress towards San José's aggressive goal to be carbon neutral by 2030.

Further Negotiations

After City Council action in January, staff at the Energy Department continued negotiation of the agreement, but an agreement has not yet been signed. Staff and Sun Pond have made substantial progress, including addressing issues related to delivery of power from the project to California, addressing technical issues resulting from the project's configuration, and agreeing on battery testing procedures. As staff and Sun Pond worked with counsel to finalize the agreement language, staff and Sun Pond became aware of a misunderstanding about how electrical losses would be accounted for in the billing determinants.

Staff clarified that San José would not pay for electrical losses from the facility to the billing meter, which is consistent with other San José power purchase agreements. Sun Pond stated that it requires an increase in of \$6,120,000 in the total not-to-exceed amount over the life of the 20-year contract. The increase is 2.7% of the prior not-to-exceed amount. In addition, Sun Pond indicated that it has become aware of delays in the delivery of certain critical equipment that makes the original online date infeasible and it requires an online date delay from April 2025 to March 2026.

Staff Recommendation

Staff recommends accepting the price increase and online date delay. Staff has negotiated many complex issues with Sun Pond and is now close to an executable agreement. During the past year, inflation and supply chain delays have caused prices for new renewable projects to increase and many in-service date delays. In this context, the changes sought by Sun Pond are moderate.

Further, in spring of 2023, staff issued a joint solicitation with East Bay Community Energy for long-term agreements with renewable projects that could be added to the existing portfolio of agreements San José has signed to provide clean power to SJCE customers. Even with the changes proposed in this memorandum, the Sun Pond agreement is competitive with proposals submitted into that solicitation for solar plus storage projects. Negotiations with short-listed bidders are underway and are challenging, given the large amount of interest in solar plus storage projects and a limited number of projects in development. Accordingly, staff considers that it is prudent to proceed with Sun Pond, given that key substantive issues have been agreed on.

Climate Smart San José Analysis

Proceeding with the agreement with Sun Pond promotes San José's ability to provide renewable power to SJCE customers at a reasonable price, thus increasing demand for renewable energy.

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EVALUATION AND FOLLOW-UP

No additional follow-up is expected at this time.

COST SUMMARY/IMPLICATIONS

Entering into the new agreement with Sun Pond will cost up to \$11,566,000 annually, beginning in 2026, and \$231,320,000 over the life of the agreement.

Funding for the agreement in the San José Clean Energy Fund (Fund 501) will be brought forward as part of future budget processes beginning with the development of the 2025-2026 Operating Budget and is subject to City Council-approved appropriation of funds. The Energy Department recommends, to City Council, SJCE customer rates on an annual basis sufficient to meet the department's costs, including power costs, considering all its agreements.

COORDINATION

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

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the November 14, 2023 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-003. Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

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.

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/s/

LORI MITCHELL

Director, Energy Department

For questions, please contact Lori Mitchell, Director of Energy, at lori.mitchell@sanjoseca.gov or (408) 535-4880.

ATTACHMENT – Summary of Material Terms for the Agreement with Sun Pond

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Summary of Material Terms:

Buyer: The City of San José.

Seller: Sun Pond, LLC.

Product: Renewable energy, capacity attributes including resource adequacy, battery tolling rights, green attributes (renewable energy certificates), and ancillary services.

Facility: Seller will develop, design, permit, construct, own, and operate a solar photovoltaic and battery energy storage system located in Maricopa County, Arizona.

CAISO Scheduling Coordinator: Buyer will be the CAISO Scheduling Coordinator for the facility.

Delivery Term: The delivery term is 20 years.

Estimated annual cost: \$11,566,000

Maximum total contract cost: \$231,320,000

Commercial Operation Date: In 2026

Insurance: To reflect the requirements approved by Risk Management.

Designated Fund and Appropriation of Funds: The agreement will include provisions that will limit the City's liability to the San José Clean Energy Operating Fund (Designated Fund). This fund is used solely for the City's costs and expenses associated with operating San José Clean Energy. The agreements will provide that payment obligations are special limited obligations of the City payable solely from the Designated Fund, and that those obligations shall not be a charge upon the revenues or General Fund of the City of San José or upon any non-San José Clean Energy moneys or other property of the Energy Department or the City of San José. The agreement will also not financially bind future governing bodies and will not constitute an obligation of future legislative bodies of the City to appropriate funds.