



Item Number 3  
GM Review CP

# Agenda Summary Report

To: Board of Directors  
From: Michael P. Cortez, PE, District Engineer  
(415) 526-1518; [mcortez@lqvsd.org](mailto:mcortez@lqvsd.org)  
Mtg. Date: July 2, 2024  
Re: Energy Services Agreement – Amendment 1  
Item Type: Consent \_\_\_\_\_ Action X Information \_\_\_\_\_ Other \_\_\_\_\_  
Standard Contract: Yes \_\_\_\_\_ X No \_\_\_\_\_ (See attached) Not Applicable \_\_\_\_\_

## STAFF RECOMMENDATION

Board to approve First Amendment to *Energy Services Agreement - Solar* with FFP BTM SOLAR, LLC.

## BACKGROUND

District staff, together with Kenwood Energy and District legal counsel, have completed the final review of the proposed First Amendment to the *Energy Services Agreement – Solar* (Agreement) with FFP BTM SOLAR, LLC (also known as ForeFront) and ready for Board review and approval. Significant changes to the Agreement addressed by the amendment include the following:

1. Added a Mechanical Completion date, also called substantial completion date, of July 25, 2025, which is approximately 10 months before the Net Energy Metering 2.0 Evaluation (NEM 2.0) deadline. The original agreement did not specify a substantial completion date for the installation of all major equipment ready for acceptance by PG&E.
2. Adjusted cost of \$0.1515 per kilowatt-hour (\$/kWh) from the original \$0.1295/kWh due to unforeseen geotechnical conditions. Cost analysis shows that overall savings during the 20-year term of the Agreement are still significant.
3. Adjusted cost of \$0.1412/kWh if ForeFront fails to meet NEM 2.0 deadline. The discounted pricing may be viewed as liquidated damages for failing to meet the target NEM 2.0 deadline.
4. Baseline schedule indicating a fixed project timeline of construction activities that does not allow variance without review and approval by the District.
5. Liquidated damages of \$500 per day, not to exceed \$15,000, if ForeFront fails to meet the permit submittal and review date defined in the baseline schedule.
6. Liquidated damages of \$500 per day, not to exceed \$15,000, if ForeFront fails to meet the mobilization date defined in the baseline schedule.

District legal counsel suggested adding specific dates in the construction baseline schedule that would become the basis of a default and breach of contract by ForeFront. However, ForeFront



believes it would be uncommon and unnecessary to include such provisions in the amendment. District staff feels that the risk of not adding specific dates can be mitigated by carefully monitoring and managing the construction activities as shown in the baseline schedule, and that any deviation will be brought immediately to ForeFront's attention as contract misrepresentation.

Additionally, in parallel with the negotiations with ForeFront, District staff has completed due diligence to determine the feasibility of cancelling the Agreement and completing the project with a different vendor. Highlights of that effort include:

1. Engineering estimates to complete the work are significantly less than the ForeFront capital expenditure price. However, this would require immediate capital outlay.
2. Confidence that the NEM 2.0 schedule can be met should the District choose the path of a different vendor.

### **PREVIOUS BOARD ACTION**

On January 5, 2023, the Board approved Resolution 2023-2295 for Energy Services Agreement with ForeFront Power

### **ENVIRONMENTAL REVIEW**

N/A

### **FISCAL IMPACT**

Additional cost of \$0.022/kWh for NEM 2.0 or \$0.0117/kWh for NEM 3.0

FIRST AMENDMENT TO  
ENERGY SERVICES AGREEMENT – SOLAR  
and

GENERAL TERMS AND CONDITIONS ENERGY SERVICES

This First Amendment (“Amendment”) to the Energy Services Agreement – Solar (“Energy Agreement” or “Agreement” of “Special Conditions”) and the General Terms and Conditions of Energy Services Agreement (“General Terms and Conditions”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”), between FFP BTM SOLAR, LLC, a Delaware limited liability company (“Provider”), and *Las Gallinas Valley Sanitary District* (“Purchaser”); and, together with Provider, each, a “Party” and together, the “Parties”).

RECITALS

WHEREAS, Parties have entered into an Energy Services Agreement – Solar dated March 3, 2023, whereby the Provider is to design, construct, and operate a Photovoltaic System (“System”) for the purpose of providing Energy Services and the sale of electricity from said System; and

WHEREAS the Energy Agreement has incorporated by reference that document entitled as the “General Terms and Conditions of Energy Services Agreement,” dated March 3, 2023, which was conditioned upon the parties entering into the aforementioned Energy Services Agreement; and

WHEREAS, Parties wish to amend that Energy Services Agreement and the incorporated General Terms and Conditions.

NOW, THEREFORE, the Parties agree to amend the agreements as follows:

1. Amendment

a. Energy Services Agreement - Solar/Special Conditions:

- i. Paragraph “3. Schedules.” is revised such that the Table of Schedules adds Schedule 11, Construction Schedule. Exhibit A, Schedule 11, to this Amendment is hereby added to the Energy Agreement. The Mechanical Completion date on the updated schedule will be no later than 63 calendar days beyond May 23rd, 2025.
- ii. The Table in “II. Schedule 2 – Energy Services Payment” shall be modified as follows:
  1. The “kWh Rate (\$/kWh)” value noted in the Table shall be \$0.1515 for the “Term Year” 1 through 20 as long as the Project is designated as NEM2 by the Local Electric Utility.
  2. In the event that the Local Electric Utility designates the Project as failing to meet the NEM2 requirements, the “kWh Rate (\$/kWh)” value noted in the Table for “Term Year” 1 through 20 shall be \$0.1412.
- iii. Schedule 10 – Project Specifications shall be amended as follows:
  1. 5.1 (O) Metals shall be hot dipped galvanized steel, anodized aluminum and stainless steel” shall be deleted in its entirety and replaced with:  
“Metals shall be hot dipped galvanized steel, anodized aluminum, or stainless steel.”

2. “5.1(Q) Only grade 316 or better stainless steel fasteners shall be used” shall be deleted in its entirety and replaced with:

“Only grade 316 stainless or galvanized fasteners shall be used.”

3. “5.6 (A) Exterior enclosures and boxes shall be minimum 14 gauge type 316 stainless steel with seams continuously welded and ground smooth, and fast access door latches” shall be deleted in its entirety and replaced with:

“Exterior enclosures and boxes located at the Purchaser’s main treatment facility, if required as part of the installation, shall be minimum 14 gauge type 316 stainless steel with seams continuously welded and ground smooth, and fast access door latches. Any other exterior enclosure and boxes that are located at the “Solar System” array shall be designed for the environment.”

4. “6.2 (B) Mounting hardware shall be compatible with the site considerations and environment. Special attention shall be paid to minimizing the risk from exposed fasteners, sharp edges, and potential damage to the units or support canopies. Corrosion resistance and durability of the mechanical hardware shall be emphasized – the use of stainless steel fasteners and aluminum support canopies are required. The use of ferrous metals, wood, or plastic components is not acceptable” shall be deleted in its entirety and replaced with:

“Mounting hardware shall be compatible with the site considerations and environment. Special attention shall be paid to minimizing the risk from exposed fasteners, sharp edges, and potential damage to the units or support canopies. Corrosion resistance and durability of the mechanical hardware shall be emphasized. The use of ferrous metals, wood, or plastic components is not acceptable

b. General Terms and Conditions of Energy Services Agreement:

- i. The following is added to Section “1: Definitions.”:

“Mechanical Completion” means the substantial completion of all construction required for the system to operate as designed, with only approval for interconnected operation by the Local Electric Utility and close-out items remaining to be completed.

- ii. The following shall be added to Section “3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.”:

1. Liquidated Damages for delay are added.

- a. \$500 per day, not to exceed \$15,000, for failing to meet the Permit Submittal and Review date in the Construction Schedule 11.
- b. \$500 per day, not to exceed \$15,000, for failing to meet the Mobilization date in the Construction Schedule 11.

2. Status of Original Agreement. All provisions of the Energy Agreement that are not expressly amended by this Amendment shall continue in full force and effect.

3. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.
4. Severability. Whenever possible, each provision of this Amendment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Amendment shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amendment.
5. Governing Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.
6. Successors and Assigns. This Amendment shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

*[signatures follow]*

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their respective duly authorized representatives on the date hereof.

**PROVIDER:**

**FFP BTM Solar, LLC**

By: \_\_\_\_\_  
Name: Ruben Fontes  
Title: President

**PURCHASER:**

**Las Gallinas Valley Sanitary District**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**SCHEDULE 11**

