

County of Santa Clara

Facilities and Fleet Department

County Center at Charcot
2310 North First Street, Suite 200
San Jose, California 95131-1011
(408) 993-4600



Date: November 28, 2022

To: Honorable Members of the Board of Supervisors
Jeffrey V. Smith, County Executive

From: Jeffrey D. Draper, Director, Facilities and Fleet Department

DocuSigned by:
Jeffrey Draper
BE6829EDA66F4E9...

Subject: Off-Agenda Report Relating to the Purchase Option for the Energy Storage System at 9400 No Name Uno, Gilroy

At the September 27, 2022, Board of Supervisors meeting, Item No. 9, Supervisor Chavez requested an off-agenda report that outlines the process for purchasing the energy storage system at 9400 No Name Uno, Gilroy, CA.

The process that the County and the Provider would go through if the County opted to purchase the energy storage system is defined in Article 2.3 of Attachment A (attached for reference) to the energy services agreement. Starting contract year six, the County could purchase the system for an amount equal to the greater of (a) the Fair Market Value of the System or (b) the Early Termination Fee, as defined in the contract. The fair market value would initially be determined by the Provider. However, if the County disputes such valuation, the parties would bring in an independent, third-party appraiser and agree to be bound to the resulting valuation.

The main reason why the County would consider purchasing the system would be a potentially lower cost. Disadvantages to purchasing the system include:

- The County would forgo a 30% Federal Investment Tax Credit, which is currently passed through to the County in the form of a decreased lease payment.
- The County would need to enter into a new Operations and Maintenance agreement for the ongoing maintenance of the system.
- Under the current agreement, the vendor is incented to optimize system performance since lease payments are decreased to the extent the system underperforms; if the system were to be purchased upfront, this alignment of interests would no longer exist.

Cc: Chief Board Aides
Greta Hansen, Chief Operating Officer
James Williams, County Counsel
Tiffany Lennear, Clerk of the Board
Mary Ann Barrous, Agenda Review Administrator

Board of Supervisors: Mike Wasserman, Cindy Chavez, Otto Lee, Susan Ellenberg, S. Joseph Simitian
County Executive: Jeffrey V. Smith

ATTACHMENT A

2.3 Purchase Option.

(i) On any Purchase Date, so long as a Purchaser Default shall not have occurred and be continuing, Purchaser has the option to purchase the System for a purchase price (the “Option Price”) equal to the greater of (a) the Fair Market Value of the System as of the Purchase Date, or (b) the Early Termination Fee as of the Purchase Date, as specified in Schedule 3, Column 2 of the Special Conditions. To exercise its purchase option, Purchaser shall, not less than one hundred and eighty (180) days prior to the proposed Purchase Date, provide written notice to Provider of Purchaser’s intent to exercise its option to purchase the System on such Purchase Date. Within thirty (30) days of receipt of Purchaser’s notice, Provider shall specify the Option Price, and provide all calculations and assumptions supporting said Option Price to Purchaser. Purchaser shall then have a period of thirty (30) days after notification to confirm or retract its decision to exercise the purchase option or, if the Option Price is equal to the Fair Market Value of the System, to dispute the determination of the Fair Market Value of the System. In the event Purchaser confirms its exercise of the purchase option in writing to Provider (whether before or after any determination of the Fair Market Value determined pursuant to Section 2.3(ii)), (i) the Parties shall promptly execute all documents necessary to (A) cause title to the System to pass to Purchaser on the Purchase Date, free and clear of any Liens, and (B) assign all vendor warranties for the System to Purchaser, and (ii) Purchaser shall pay the Option Price to Provider on the Purchase Date, such payment to be made in accordance with any previous written instructions delivered to Purchaser by Provider or Provider’s Financing Party, as applicable, for payments under this Agreement. Upon execution of the documents and payment of the Option Price, in each case as described in the preceding sentence, this Agreement shall terminate automatically. Payment of the Option Price shall be in lieu of and instead of any payments as described in Section 2.2 hereof. In the event Purchaser retracts its exercise of, or does not timely confirm, the purchase option, the provisions of this Agreement shall be applicable as if Purchaser had not exercised any option to purchase the System.

(ii) Determination of Fair Market Value. If the Option Price indicated by Provider in accordance with Section 2.3(i) is equal to the Fair Market Value (as determined and demonstrated by supporting documentation provided by Provider) and Purchaser disputes such stated Fair Market Value within thirty (30) days of receipt of such notice from Provider, then the Parties shall mutually select an independent appraiser with experience and expertise in the Energy Services industry. Such appraiser shall have expertise and experience in valuing photovoltaic systems, resale markets for such systems and related environmental attributes, and shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error; however, if Purchaser in good faith disputes the valuation made by the appraiser, Purchaser shall have the right to retract its decision to exercise the Purchase Option. The costs of the appraisal shall be borne by Purchaser if such appraisal results in a value equal or greater than the value provided by Provider pursuant to Section 2.3(i); otherwise, the Parties shall equally share such cost.