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Title: Actions pertaining to a Solar Energy Ground Lease between City of Fresno and Fresno Community Solar Developers, LLC., at the Regional Wastewater Reclamation Facility (Council District 3):

1. Adopt Mitigated Negative Declaration No. P21-02498 dated November 10, 2021, and Addendum to Mitigated Negative Declaration No. P21-02498 dated November 23, 2021, prepared pursuant to CEQA Guidelines Sections 15070 through 15075, and find based on the City's own independent judgment and analysis, that with the mitigation incorporated, there is no substantial evidence that the project will have a significant effect on the environment.
2. Approve the Agreement for Solar Energy Ground Lease between City of Fresno and Fresno Community Solar Developers, LLC., to lease 74.41 acres of land at the Fresno Clovis Regional Wastewater Reclamation Facility to generate solar energy under the California Public Utilities Commission Disadvantaged Communities-Green Tariff Program.

Sponsors: Department of Public Utilities

Indexes:

Code sections:

Attachments: 1. Attachment 1 - Agreement for Solar Energy Ground Lease, 2. Attachment 2 - Mitigated Negative Declaration No. P21-02498, 3. Attachment 3 - Addendum to Mitigated Negative Declaration No. P21-02498

Date	Ver.	Action By	Action	Result
12/2/2021	1	City Council	adopted	Pass

REPORT TO THE CITY COUNCIL

FROM: MICHAEL CARBAJAL, Director
Department of Public Utilities

BY: CHERYL BURNS, Senior Management Analyst
Department of Public Utilities - Administration

SUBJECT

Actions pertaining to a Solar Energy Ground Lease between City of Fresno and Fresno Community Solar Developers, LLC., at the Regional Wastewater Reclamation Facility (Council District 3):

1. Adopt Mitigated Negative Declaration No. P21-02498 dated November 10, 2021, and Addendum to Mitigated Negative Declaration No. P21-02498 dated November 23, 2021, prepared pursuant to CEQA Guidelines Sections 15070 through 15075, and find based on the City's own independent judgment and analysis, that with the mitigation incorporated, there is no substantial evidence that the project will have a significant effect on the environment.
2. Approve the Agreement for Solar Energy Ground Lease between City of Fresno and Fresno Community Solar Developers, LLC., to lease 74.41 acres of land at the Fresno Clovis

Regional Wastewater Reclamation Facility to generate solar energy under the California Public Utilities Commission Disadvantaged Communities-Green Tariff Program.

RECOMMENDATION

Staff recommends that the City Council:

1. Adopt Mitigated Negative Declaration No. P21-02498 dated November 10, 2021, and Addendum to Mitigated Negative Declaration No. P21-02498 dated November 23, 2021, prepared pursuant to CEQA Guidelines Sections 15070 through 15075, and find based on the City's own independent judgment and analysis, that with the mitigation incorporated, there is no substantial evidence that the project will have a significant effect on the environment.
2. Approve the Agreement for Solar Energy Ground Lease between City of Fresno and Fresno Community Solar Developers, LLC., to lease 74.41 acres of land at the Fresno Clovis Regional Wastewater Reclamation Facility to generate solar energy under the California Public Utilities Commission Disadvantaged Communities-Green Tariff Program.
3. Authorize the Director of Public Utilities, or designee, to execute the Agreement for Solar Energy Ground Lease on behalf of the City of Fresno.

EXECUTIVE SUMMARY

On June 21, 2018, the California Public Utilities Commission (CPUC) approved D.18-06-027 as a new program to promote Solar Generation for Disadvantaged Communities (DAC). Under this program, Fresno Community Solar Developers, LLC. (FCSD) is pursuing a Disadvantaged Communities-Green Tariff Program (DAC-GT) solar project through Pacific Gas & Electric (PG&E). On February 27, 2020, the City Council approved a Grant of Option Agreement with FCSD for the development of a DAC-GT solar generation facility at South Cornelia Avenue south of West Jensen Avenue near the Fresno-Clovis Regional Wastewater Reclamation Facility (RWRF). On April 8, 2021, the City Council approved the First Amendment to the Grant of Option Agreement with FCSD, which extended the expiration date from June 30, 2021, to December 31, 2021; reduced the lease price from \$2,000 per acre with a three percent per year annual escalator to a fixed \$1,000 per acre; allowed for two 10-year lease extensions with a profit share equal to 20 percent of distributable cash to be paid in lieu of rent; and included a workforce development program to provide hands-on utility scale solar photovoltaic training to citizens of disadvantaged census tracts located within the City of Fresno who are interested in gaining skills to obtain employment in the solar industry.

The Department of Public Utilities has negotiated an Agreement for Solar Energy Ground Lease with FCSD for 74.41 acres of land in compliance with the terms as approved in the Grant of Option Agreement and the First Amendment to the Grant of Option Agreement. During the construction period only, FCSD will lease an additional 5 acres for use as construction staging and laydown area.

BACKGROUND

On June 21, 2018, the CPUC approved D.18-06-027, as a new program to promote DACs. With that decision, the CPUC is requiring investor owned utilities (e.g., PG&E) to implement two new Green Tariff Programs for DACs. The Green Tariff Programs for DACs approved by the CPUC include both a Disadvantaged Communities-Green Tariff Program (DAC-GT) and a Community Solar Green Tariff

(CS-GT).

The DAC-GT program is designed to allow families living within DACs to participate in the benefits of solar energy production when they would normally not be able to afford the cost of solar energy systems to be placed on their home. Under the DAC-GT program, families who live in DACs and meet the income eligibility requirements for the California Alternate Rates for Energy (CARE) and Family Electric Rate Assistance (FERA) programs and sign up for the DAC-GT program will be provided a 20 percent discount off of their normal applicable electrical energy rate. The DAC-GT enrollment has a program participation cap of 70 MW for the entire PG&E service territory.

On February 27, 2020, the City Council approved a Grant of Option Agreement with FCSD for the development of a 20 MW DAC-GT solar generation facility at South Cornelia Avenue south of West Jensen Avenue near the RWRP. The Grant of Option Agreement provided FCSD the exclusive right to lease 158 acres of land owned by the Wastewater Management Division at \$2,000 per acre for the first year of the lease, and a 3 percent per year annual escalator over a 20-year term of the lease.

Following approval of the Grant of Option Agreement, FCSD determined that substation improvements required by PG&E to support a 20 MW solar generation facility at the selected site were cost prohibitive. Due to the additional cost, FCSD reengineered and downsized the project to a 10 MW facility requiring only 85 acres of land. Additionally, in 2020, PG&E advertised two Request for Offers (RFO) solicitations for DAC-GT solar generation projects. In the first RFO, FCSD was unsuccessful at getting a Power Purchase Agreement (PPA) with PG&E in part because of a too high energy price offering. In the second RFO, FCSD was required to significantly lower its energy price offering. The smaller size project and the lower energy price offering necessitated changes to the Grant of Option Agreement.

On April 8, 2021, the City Council approved the First Amendment to the Grant of Option Agreement with FCSD. The First Amendment extended the expiration date from June 30, 2021, to December 31, 2021; reduced the lease price from \$2,000 per acre with a three percent per year annual escalator to a fixed \$1,000 per acre; allowed for two 10-year lease extensions with a profit share equal to 20 percent of distributable cash, to be paid in lieu of rent; and included a workforce development program to provide hands-on utility scale solar photovoltaic training to citizens of disadvantaged census tracts located within the City of Fresno who are interested in gaining skills to obtain employment in the solar industry.

The Department of Public Utilities has negotiated an Agreement for Solar Energy Ground Lease with FCSD for 74.41 acres of land in compliance with the terms as approved in the Grant of Option Agreement and the First Amendment to the Grant of Option Agreement. During the construction period only, FCSD will lease an additional 5 acres for use as construction staging and laydown area.

The parcel, located at 2865 S. Cornelia Avenue (APN 327-030-22ST) was acquired in 1995, via eminent domain, for the creation of a buffer zone around the Wastewater Treatment Plant. The land is still necessary for the City's use and still functions as a buffer zone and under the proposed lease terms, the City retains the right to make emergency discharges of effluent on the land. Thus, the land is not surplus land for purposes of the surplus land act. Further, the Grant of Option, First Amendment to the Grant of Option, and negotiations regarding this lease predate the amendments to FMC sections 4-203 and 4-204 concerning surplus land and the disposition of real property.

Staff recommends the City Council approve the Agreement for Solar Energy Ground Lease and

authorize the Director of Public Utilities, or designee, to execute the agreement on behalf of the City of Fresno.

The City Attorney's Office has reviewed the agreement and approved as to form.

ENVIRONMENTAL FINDINGS

An Initial Study was prepared pursuant to CEQA Guidelines Section 15060 which resulted in the determination that the proposed project will cause potentially significant effects on the environment but that revisions in the project plans and or mitigation measures agreed to by the applicant avoided and/or mitigated all identified significant effects to a level of less than significance. Further, there is no substantial evidence, in light of the whole record, that the project as revised will have a significant effect on the environment. Accordingly, a Mitigated Negative Declaration (MND) was prepared pursuant to CEQA Guidelines Sections 15070 and 15071. The Council has considered the MND, together with any and all comments received during the public review process, has reviewed the whole record before it, and based on its own independent judgement and analysis has determined that there is no substantial evidence that the project will have a significant effect on the environment and that a MND is appropriate. Thereafter, an addendum to the MND was prepared to clarify the project site acreage.

LOCAL PREFERENCE

Local Preference was not considered because this Agreement for Solar Energy Ground Lease is not a bid or award of a construction or services contract.

FISCAL IMPACT

The annual lease rate of \$1,000 per acre will accrue to the Wastewater Management Division. While there is no direct benefit to the General Fund, it is expected that the General Fund will benefit from the project from additional sales tax and property tax payments which will result from the project.

Attachments:

Attachment 1 - Agreement for Solar Energy Ground Lease

Attachment 2 - Mitigated Negative Declaration No. P21-02498

Attachment 3 - Addendum to Mitigated Negative Declaration No. P21-02498