



## CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 8/1/2023

Item Creation Date: 7/20/2023

### MYR-Sunnyside Landfill Solar Project Lease Amendment

Agenda Item#: 28.

#### **Summary:**

ORDINANCE approving and authorizing a First Amended and Restated Surface Lease – Closed Municipal Landfill between the City of Houston, Texas, as landlord, and **SUNNYSIDE ENERGY LLC**, as tenant, for 249.56 acres of land located in Houston, Harris County, Texas 77051

#### **Background:**

The City of Houston, as Landlord (“City”), and Sunnyside Energy LLC, as Tenant (“Tenant”), previously entered into a surface lease dated effective January 25, 2021, pursuant to Ordinance No. 2021-40, passed and adopted by the City Council of the City on January 13, 2021 (“Original Lease”). The leased property is located generally at the site of a former municipal landfill near 3100 Bellfort St. Under the Original Lease, the City granted Tenant a 30-year lease covering a called 240 acres of land for the development, construction and operation of a solar farm and the solar project, including all equipment, structures and improvements installed by Tenant on the leased property, would belong solely to the Tenant.

The Original Lease is being amended and restated primarily to effect change in project ownership (i.e., City will hold title to Project Facilities), and make corresponding revisions. The amended lease also contains various other changes; a few of the changes are as follows:

- The Original Lease included only a general depiction (aerial map) of the leased property and called for the Tenant to obtain a survey and legal description. The amended lease incorporates a recent survey and legal description for 249.56 acres (“Leased Premises”), which excludes a ~6-ac. tract included in the Original Lease situated north of Bellfort St.
- City will hold title to Project Facilities, which will consist of 2 MW Community Solar Component, 50 MW Utility-Scale Solar Component and 150 MW Battery Component, together with all related improvements, equipment, structures, buildings, fixtures, and appurtenances. This follows the business models that have been very successful for our sports stadiums.
- In the Original Lease, rent was \$1 per year for the entire lease term. Under the amended lease, Tenant is obligated to pay Development Rent and Operations Rent as described below.
  - Development Rent (paid during Development & Construction Period)
    - \$20,000 per year, starts when amended lease is executed.
  - Operations Rent (paid during Operations Period)
    - Part A: \$200,000 per year, starts when Utility-Scale Solar Component achieves Commercial Operation and increases every 5 years based on inflation for land component (25%)
    - Part B: \$200,000 per year, starts when Battery Component achieves Commercial Operation.
    - Tenant agrees to increase Operations Rent by \$200,000 as incentive for new lease agreement when extended for 15 years.
- The target date for Commercial Operation of the Community Solar Component is December 15, 2023. The Utility-Scale Solar Component must achieve Commercial Operation by May 31, 2024. Extensions for cause are permissible.
- Tenant must provide the City with a performance bond or letter of credit in the amount of \$10M to secure Tenant’s timely construction and installation of Project Facilities and cause Commercial Operation.
- The Tenant committed to provide certain community benefits under the Original Lease. Under the amended lease, Tenant must still meet workforce training and local hiring requirements.
- Pursuant to the City’s Charter, the Lease Term is capped at 30 years. Upon lease expiration, Tenant expects to enter into a new lease agreement with the City, which must be approved by future City Council action. If City Council fails to approve a new lease, the City must pay Tenant \$26,666,667.00 for unamortized capital improvement costs. Any proposed adjustments to this amount must be made in accordance with the process set forth in a separate memorandum to be executed concurrently with the amended lease.
- 
- Tenant is required to comply with the City’s MWSBE program and applicable OBO Policies and Procedures. Tenant must also make good faith efforts to award subcontracts or supply agreements consistent with goals set by OBO.
- Tenant assumes the full and sole responsibility, cost and expense for the condition, operation, utilities, security, repair, replacement, maintenance and

- Tenant assumes the full and sole responsibility, cost and expense for the condition, operation, utilities, security, repair, replacement, maintenance and management of the Project Facilities and Leased Premises during the Term.

• Tenant must get City’s consent before issuing any announcement, statement, press release, or other publicity or marketing materials relating to the City, the Lease or the Leased Premises.

• The parties will establish a format for an annual report relating to the solar project’s environmental performance and achievement towards the City’s Climate Action Plan and Sunnyside Complete Communities Action Plan goals, and include information such as energy output, CO2e emissions avoided, solar farm workforce demographics, and rate comparison for community solar array.

A future council action will be required to segregate and designate the use of revenue from this agreement for Complete Communities.

DocuSigned by:  
  
E405371A27C1498  
**Andy F. Icken, Chief Development Officer**

**Prior Council Action:**

Ordinance No. 2021-40, passed and adopted January 13, 2021

**Amount and Source of Funding:**

REVENUE

**Contact Information:**

Andy Icken  
Chief Development Officer  
**Phone:** (832) 393-1064

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
PCA 2021-040	Backup Material
Caption	Other
Ordinance	Ordinance/Resolution/Motion
RCA Funding Info	Financial Information