



County of Monterey

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: 23-598

July 18, 2023

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- a) Adopt a Resolution making certain findings in accordance with California Government Code Sections 4217.10 et seq. and authorize the County Contracts Purchasing Officer to enter into a Master Energy Services Agreement, including the Power Purchase Agreement (PPA) Template, and other related agreements with Mynt Systems and their affiliates to implement and complete the proposed energy-related improvements to County facilities;
- b) Authorize non-standard indemnification and insurance provisions in those documents; and
- c) Provide other direction to staff as appropriate.

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RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a) Adopt a Resolution making certain findings in accordance with California Government Code Sections 4217.10 et seq. and authorize the County Contracts Purchasing Officer to enter into a Master Energy Services Agreement, including the Power Purchase Agreement (PPA) Template, and other related agreements with Mynt Systems and their affiliates to implement and complete the proposed energy-related improvements to County facilities;
- b) Authorize non-standard indemnification and insurance provisions in those documents; and
- c) Provide other direction to staff as appropriate.

SUMMARY:

Staff recommends that the County install solar plus battery storage at 1410 Natividad Road and 1441 Schilling Place and perform energy efficiency upgrades at both facilities financed through an energy services contract. In future Energy Service System Confirmations, staff recommends also using PGE's On Bill Finance (OBF) program, however, OBF will not be used for today's Board Action.

DISCUSSION:

On October 27, 2020, the Board of Supervisors recommended entering into a Program Services Agreement with Mynt Systems, Inc. to undertake an Energy Assessment at both the Natividad Jail Complex and Schilling Place with the goal of reducing energy costs and emissions while increasing resiliency. Staff received the following project recommendations and presented them to the Budget Committee on May 18, 2021 and recommended the project move forward. The Capital Improvements Committee Chair was informed via memo due to meeting cancellations. The project is included as part of the Draft Capital Improvement Plan FY 23-24 that received support by the Capital

Improvement Committee on March 6, 2023, was adopted by the Board in June 2023.

Committee Recommendations:

1. 1410 Natividad Rd, including the Jail Complex and the Sheriff's Public Safety Building: Install a 1,285.9kW rooftop solar array with a 2,145.6kWh battery at the new jail building along with a 372.7kW rooftop solar array on the public safety building as well as energy efficiency upgrades resulting in a reduction of 127,895 kWh of energy.
2. 1441 Schilling Place Building: Install A 1,010.7kW rooftop solar array with a 2,536.8kWh battery and energy efficiency upgrades resulting in a reduction of 311,950 kWh of energy.

Due to certain changes in operations that are taking place at the "new" jail, staff is now recommending that the County not install improvement on the Jail Complex at this time, but, instead, move forward with the improvements at the Sheriff's Public Safety Building and Schilling Place.

These projects are not only expected to save greater than \$10M in expenditures over the 25 year contract term, but they will also reduce the County's emissions and are part of the overall pathway to Net Zero emissions in our buildings. The Jail Complex and Schilling Place are the number 2 and number 6 County energy users respectively. Further, the Schilling Place project also includes battery storage providing some resiliency to the building in the event of an outage. These facilities were chosen for this project because of their substantial energy use, availability of space, project economics, and strategic location for future project opportunities.

This project is contemplated as a pilot project that demonstrates the feasibility of achieving emissions reductions, energy savings, and resiliency for our County facilities without incurring upfront costs and is meant to be scaled across the County. To achieve this, staff is proposing entering into a Master Energy Services Agreement, that could govern future similar efforts. This master agreement serves to standardize agreement terms for the County's sustainable infrastructure efforts and allows the County to bundle savings and reapply those savings across other decarbonization efforts thereby funding those efforts over time through the utility allocations. The Master Energy Services Agreement will allow the County to position itself for infrastructure funding and improvements that require a quick turnaround time for shovel ready projects when they involve energy savings through energy efficiency and renewable energy.

Next Steps

With County approval and authorization via the Master Energy Services Agreement, Power Purchase Agreements, and Site Lease Agreements, Mynt Systems Services will prepare design plans and specifications, bid the project, and hire contractors to construct energy improvements. All project design, construction, construction administration, and profits are built into the total project costs to the County and paid for through energy cost savings as specified in Power Purchase Agreements, attached to this staff report as "Exhibit C-1 Power Purchase Agreement Solar PV & Storage Schilling Place" and "Exhibit C-2 Power Purchase Agreement Solar PV Sheriff Public Safety Building". The Power Purchase Agreements establish schedules over their 25-year terms that determine the price of electricity as a \$/kwh rate with the expected annual quantity of kwh generation that the County is purchasing from the project, which can be seen on Exhibit 1 item 7 and Table 1 Pre-Weather Adjusted Guaranteed Production of each Power Purchase Agreement. This price starts at \$.185/kwh for Schilling Place and the Sheriff's Public Safety Building and escalates for the first 10 years of the agreement and then is capped at a fixed rate of \$.2209/kwh for the remainder of the term. For reference, the current rate price of electricity is expected to the locked in price of \$.2209/kwh by year 5 of the project. The Power Purchase Agreements also contain a Performance Guarantee negotiated at 90% of the projected generation amount to ensure that savings exceed project costs. In this

arrangement, the vendor will measure and verify the actual energy savings and if the actual energy savings are not realized as estimated, the shortfall is reimbursed to the County. In addition to a performance guarantee, this project also allows the County to retain the Renewable Energy Credits in order to avoid double counting of emissions reductions and contractually provides the County with the option to purchase (buyout) the systems from Monterey Solar 1, LLC at five (5) specified points in time; these opportunities to purchase the systems scheduled for the first day of years 7, 9, 11, 16, and 20 of operation. The County may not purchase the systems before year 6 due to tax equity liability concerns.

To best account for the savings generated by this project, staff recommends that the Auditor Controller annually appropriate funds to the Sustainability Program budget unit for the expected amount of electricity payments under the Power Purchase Agreements, as estimated in the “Solar PPA Payments” column of the attached 25-Year PPA Cash Flow, from allocations from affected departments, and that the Sustainability Program directly bill affected departments for the “Net Annual Savings” generated by the project, as described in the attached 25-Year PPA Cash Flow, to be redeployed into furthering the County’s sustainability objectives in alignment with the upcoming Community Climate Action and Adaptation Plan. These savings associated with this 25-Year PPA Cash Flow are calculated using a conservative 3% escalation rate of utilities; however, PG&E rate increases far exceed this escalation, which allows departments to benefit from higher savings than the Sustainability Program will recapture. Technical energy production information will be made available in reports by Mynt Systems, Inc for monitoring and evaluation. This recommendation is necessary because utility payments within the County are usually accounted for by the County-Wide Cost Allocation Plan (COWCAP) and the Utility Fund on a reimbursement basis; however, this project effectively generates revenue in a manner that is not captured by this reimbursable system. Therefore, this ensures that the Sustainability Program is provided with the necessary funds to make payments under the Power Purchase Agreements and that the benefits of this project are accounted for each year, while providing real savings for departments participating in this project.

The Master Energy Services Agreement provides a negotiated governing framework for future sustainability upgrades that may be added as exhibits in the form of Energy Service Systems. Energy Service Systems are defined as “solar systems, battery storage systems, energy efficiency devices, electric vehicle charging stations, and other products and mechanisms to reduce emissions or energy use in buildings”. Exhibits D-G of the Master Energy Services Agreement are placeholder exhibits to illustrate where additional Energy Services Agreements can be collated. Each of these future projects would return to the Board for approval. Similarly, each new project would require an additional Energy Service System Confirmation and a Site Lease Agreement even though the terms of the Master Energy Services Agreement will generally apply to each new project.

Government Code Requirements to Enter into an Energy Services Contract

California Government Code Section 4217.12(a) for Energy Conservation Contracts states that:

- (a)[...] a public agency may enter into an energy service contract and any necessarily related facility ground lease on terms that its governing body determines are in the best interests of the public agency if the determination is made at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, and if the governing body finds:
 - (1) That the anticipated cost to the public agency for thermal or electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the public agency of thermal, electrical, or other energy that would have been consumed by the public agency in the absence of those

purchases.

(2) That the difference, if any, between the fair rental value for the real property subject to the facility ground lease and the agreed rent, is anticipated to be offset by below market energy purchases or other benefits provided under the energy service contract.

The County provided public notice on June 27, 2023, two weeks in advance of the July 18 public hearing at the Board of Supervisors meeting. The cost to the County for thermal, electrical energy, or conservation services provided by the energy conservation project in the proposed Master Energy Services Agreement and Energy Systems Service Confirmation is projected to be less than the County's cost for thermal, electrical energy, or other energy that would have been consumed by the County in the absence of the proposed project.

The difference between the estimated costs of the proposed project is anticipated to be offset by energy cost savings over the project life and it is in the best interests of the County to enter into this energy services contact. As such, these conditions have been met and the Board can make the required findings in order for the County to enter into the agreements with Mynt Systems, Inc. and Monterey Solar 1, LLC.

OTHER AGENCY INVOLVEMENT:

The County Sustainability Program, with the assistance of the Office of County Counsel, negotiated the Master Energy Services Agreement and related agreements. The following County departments had opportunities to provide feedback, Public Works, Facilities and Parks (PWFP), Sheriff's Department, County Counsel including Risk Management, CAO Budget and Contracts and Purchasing.

The project is included as part of the Draft Capital Improvement Plan FY 23-24 that received support by the Capital Improvement Committee on March 6, 2023, which is scheduled to be adopted by the Board in July 2023.

This project is under the direction of the County Administrative Office's Sustainability Program. However, PWFP staff will act as the County project manager and liaison for the construction phase of the project. The Sustainability Program shall identify a funding source paid through a Reimbursable Service Agreement (RSA) to PWFP to cover all project resource cost. In addition, Sustainability shall seek support from the Capital Improvements Committee to add to the project as a FY 23-24 funded priority capital project for PWFP to include in their work plan and BC for the appropriate funding to cover all project resource cost. Once operational, when maintenance imperatives interact with the solar arrays, Sustainability shall coordinate with Facilities and Mynt Systems, Inc. and other contractors to conduct regularly scheduled maintenance.

Sustainability Program and PWFP staff collaborated to ensure that this project is compatible with the ongoing maintenance needs of County facilities. Primary concerns from PWFP's perspective included the ability to access rooftop building equipment, the cost to shut down and remove parts of the solar system to perform maintenance, and the potential need to replace the roof during the contracted term of the solar system. Concerning maintenance access, the system will be designed with the necessary setbacks from existing County equipment to provide access. Additionally, the system is built on ballasts, which are movable racks that are not drilled into the roof. This minimizes the potential for roof damage and allows for cost-effective and quick disassembly for any needed maintenance work. For example, if PWFP staff needed to clear part of the system to repair a roof leak, it would take a call to

Mynt Systems Inc, who would then disconnect the relevant parts of the system. From there, a 150 square foot area could be cleared in ten to fifteen minutes. Staff have also negotiated to protect the County from paying the cost associated with Mynt Systems Inc. moving sections of the system, which can be seen in provision 6.11 of the Site Lease agreements. Furthermore, staff negotiated for a 96-hour grace window for each calendar year for the County to perform maintenance activities that require the system to be shutdown during which the County is not responsible for making payments the system would have produced; this can be seen in section 7d of the Power Purchase Agreements. If the rooftop needed to be replaced, the system can be removed in sections to best accommodate the workflow of that replacement and continue to provide benefits to the County or the grace period of section 7d of the Power Purchase Agreement can be triggered to minimize the County's liability.

FINANCING:

Should the County decide not to move forward with any of the above recommendations, the County will owe Mynt Systems, Inc. a \$25,000 Assessment Fee per site as required per the Program Service Agreement. If the County is required to pay the \$50,000 Assessment Fee, funds could be allocated from General Fund, Fund 001, Public Works, Facilities, and Parks Department 3200, Utilities Appropriation Unit PWFP055 as outlined in the Board Order approving the Program Services Agreement. However, this cost is not included in the fiscal year (FY) 2022-23 adopted budget. A funding source would need to be identified in the event the County was required to pay these assessment fees.

Mynt Systems Inc, in conjunction with the County Budget Office and the County public finance partner, KNN Public Finance, LLC have evaluated various financing pathways for these projects and both the Budget Committee and Debt Advisory Committee have recommended utilizing a Power Purchase Agreement structure to finance the renewable energy generation and battery storage portions of this project which is being recommended today.

For future Energy Service System Confirmation projects, under the Master Energy Services Agreement may be funded through the On Bill Finance (OBF) program. Under the direction of the California Public Utilities Commission, PG&E developed a financing program to provide incentives for jurisdictions to undertake energy efficiency projects. This financing program provides 0% loan financing that is anticipated to be paid back through the savings that is realized from the efficiency projects. The debt service will appear on the monthly PG&E bills at a rate that is estimated to be equal to the new monthly energy savings, so operational costs do not increase for the jurisdiction. The 0% financing offers a maximum ten year pay-back period has been utilized successfully by many jurisdictions in the Association of Monterey Bay Agency Governments (AMBAG). Should the County opt to pursue the OBF program, total project cost being funded through OBF would be \$786,951.

Pursuant to the Constitution of the State of California, the CAO Sustainability Program must budget the total outstanding on-bill finance liability for the projects each year until the end of the pay-back period. Sustainability Program staff will return via this Board's Budget Committee to add the OBF energy efficiency upgrades to the Master Energy Services Agreement as an additional Energy Services System once PG&E has made the final OBF terms available. The OBF component of this project is an option to be considered by the Board, but is not required for the advancement of the project.

To best account for the savings generated by this project, staff recommends that the Auditor Controller annually appropriate funds to the Sustainability Program budget unit for the expected amount of electricity payments under the Power Purchase Agreements, as estimated in the "Solar PPA

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Payments column of the attached 25-Year PPA Cash Flow, from allocations from affected departments, and that the Sustainability Program directly bill affected departments for the “Net Annual Savings” generated by the project, as described in the attached 25-Year PPA Cash Flow, to be redeployed into furthering the County’s sustainability objectives in alignment with the upcoming Community Climate Action and Adaptation Plan. These savings associated with this 25-Year PPA Cash Flow are calculated using a conservative 3% escalation rate of utilities; however, PG&E rate increases far exceed this escalation, which allows departments to benefit from higher savings than the Sustainability Program will recapture. Technical energy production information will be made available in reports by Mynt Systems, Inc for monitoring and evaluation. This recommendation is necessary because utility payments within the County are usually accounted for by the County-Wide Cost Allocation Plan (COWCAP) and the Utility Fund on a reimbursement basis; however, this project effectively generates revenue in a manner that is not captured by this reimbursable system. Therefore, this ensures that the Sustainability Program is provided with the necessary funds to make payments under the Power Purchase Agreements and that the benefits of this project are accounted for each year, while providing real savings for departments participating in this project.

The above recommendation has been made in collaboration with Sustainability Program, PWFP, and Budget Office staff to account for the expected transition away from the reimbursable utility payments system in the coming fiscal year. Therefore, Sustainability Program staff will need to return to the Board to request additional appropriations for the operational months of Fiscal Year 23-24. Mynt Systems, Inc. estimates that the system at 1441 Schilling Place will take 10 months to be operational and that the system at the Sheriff’s Public Safety Building will take 6 months to be operational, this includes permitting and construction. If this process starts in August 2023, staff will return to the Board to request additional appropriations estimated at \$24,962 for 1441 Schilling Place and \$29,192 for the Sheriff’s Public Safety Building for Fiscal Year 23-24.

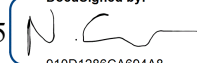
BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The Sustainability Program is designed to support the environmental, social, and economic well-being of the County.

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

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Attachments:

- Exhibit C-1 Power Purchase Agreement Solar PV & Storage Schilling Place
- Exhibit C-2 Power Purchase Agreement Solar PV Sheriff Public Safety Building
- Site Lease Agreement Schilling Place
- Site Lease Agreement Sheriff Public Safety Building
- 4217 Resolution

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Signed Master Energy Services Agreement, Power Purchase Agreements, and Site Leases
Mynt Systems Sole Source Agreement
25-Year PPA Cash Flow