

**COUNCIL ACTION FORM**

**SUBJECT:**           **AMENDMENT TO SUNSMART AMES COMMUNITY  
SOLAR FARM ENERGY SERVICES AGREEMENT**

**BACKGROUND:**

On July 23, 2019, the City Council approved an Energy Services Agreement with ForeFront Power (FFP Origination, LLC) for the SunSmart Ames community solar farm. This agreement contains two scenarios in which the City could terminate the contract prior to the expiration of the agreement in 25 years.

The first scenario provides for ForeFront to remove the solar system in exchange for an early termination fee per watt, where the penalty is high in year one, but reduces each year until year 25. This first scenario is intended to capture both the costs to remove the equipment and the lost revenue ForeFront and its investors would no longer receive for the remainder of the project. In year 1 of the agreement, this penalty equates to approximately \$3.3 million. In year 25, the penalty is approximately \$594,000.

The second scenario provides for the City to take possession of the system, and for the City to pay the greater of the appraised value of the system or a scheduled option price per watt, where the minimum option price decreases each year. In the second scenario, the City is not eligible to consider purchasing the system until at least 63 months from the first date of commercial operation. This delay allows ForeFront's investors to maximize their receipt of the tax credits that only are paid in the first seven years after construction. If this purchase option occurs after the 5<sup>th</sup> anniversary of the agreement, the minimum option price is approximately \$1,188,000 (or appraised value, whichever is greater). After the 25<sup>th</sup> anniversary, the minimum option price is approximately \$88,000 (or appraised value, whichever is greater).

As we approach the Commercial Operation Date in the next few weeks, ForeFront has reached the stage of the project development in which it can now secure a tax equity partner. This third-party interaction is necessary to monetize the tax incentives generated by the farm, and this structure was a contributing factor to pursuing the chosen model for the community solar farm (refer to Council Action Form for Item #28 on 12/13/2016).

ForeFront's tax equity partner brought to ForeFront's attention that the Early Termination Fee schedules in the contract, which were developed in 2018 when the contract was agreed to with Forefront, no longer reflect the expected Fair Market Value of the system. As a result, the tax equity partner is concerned that the low early termination fee exposes them to an unacceptable risk. **Therefore, ForeFront is requesting an amendment to the Early Termination Fee schedules.**

**PROPOSED CHANGES TO OPTION PRICE (IF SYSTEM IS PURCHASED BY CITY):**

ForeFront is only proposing changes to the minimum option price in the first two years of the option period. The table below outlines the current option prices compared to the proposed option prices, based on the system being 2.2 MW in size:

CURRENT CONTRACT		FOREFRONT'S PROPOSED CHANGES		
Purchase date occurs on the 91 <sup>st</sup> day following:	Option Price (calculated by City staff)	Purchase date occurs on the 91 <sup>st</sup> day following:	Option Price (calculated by City staff)	DIFFERENCE
<i>Prior to 90 days after 5<sup>th</sup> Anniversary</i>	<i>Not eligible for option</i>	<i>Prior to 90 days after 5<sup>th</sup> Anniversary</i>	<i>Not eligible for option</i>	--
5 <sup>th</sup> Anniversary	\$1,188,000	5 <sup>th</sup> Anniversary	\$1,694,000	\$506,000
6 <sup>th</sup> Anniversary	1,144,000	6 <sup>th</sup> Anniversary	1,672,000	528,000
7 <sup>th</sup> Anniversary	1,100,000	7 <sup>th</sup> Anniversary	1,100,000	--
8 <sup>th</sup> Anniversary	1,034,000	8 <sup>th</sup> Anniversary	1,034,000	--
9 <sup>th</sup> Anniversary	990,000	9 <sup>th</sup> Anniversary	990,000	--
10 <sup>th</sup> Anniversary	946,000	10 <sup>th</sup> Anniversary	946,000	--
11 <sup>th</sup> Anniversary	902,000	11 <sup>th</sup> Anniversary	902,000	--
12 <sup>th</sup> Anniversary	836,000	12 <sup>th</sup> Anniversary	836,000	--
13 <sup>th</sup> Anniversary	792,000	13 <sup>th</sup> Anniversary	792,000	--
14 <sup>th</sup> Anniversary	748,000	14 <sup>th</sup> Anniversary	748,000	--
15 <sup>th</sup> Anniversary	682,000	15 <sup>th</sup> Anniversary	682,000	--
16 <sup>th</sup> Anniversary	616,000	16 <sup>th</sup> Anniversary	616,000	--
17 <sup>th</sup> Anniversary	572,000	17 <sup>th</sup> Anniversary	572,000	--
18 <sup>th</sup> Anniversary	506,000	18 <sup>th</sup> Anniversary	506,000	--
19 <sup>th</sup> Anniversary	440,000	19 <sup>th</sup> Anniversary	440,000	--
20 <sup>th</sup> Anniversary	374,000	20 <sup>th</sup> Anniversary	374,000	--
21 <sup>st</sup> Anniversary	308,000	21 <sup>st</sup> Anniversary	308,000	--
*				
23 <sup>rd</sup> Anniversary	242,000	22 <sup>nd</sup> Anniversary	242,000	--
24 <sup>th</sup> Anniversary	154,000	23 <sup>rd</sup> Anniversary	154,000	--
25 <sup>th</sup> Anniversary*	88,000	24 <sup>th</sup> Anniversary	88,000	--

*\*The original contract contains an error in that the 22<sup>nd</sup> Anniversary is omitted and a 25<sup>th</sup> Anniversary (which would be 26 years of operation – beyond the duration of the agreement) exists. The proposed amendment rectifies these counting errors.*

**Again, it is important to note that these prices are the minimum option price. The contract currently requires, and will continue to require, that the option price be the greater of the price indicated above, or the fair market value of the system at the time the option is exercised.** ForeFront contends that the value of the system is expected to remain high throughout its life, and therefore this modification would not impact the price paid by the City. City staff notes that in the unlikely event ForeFront's assumption about the value of the system is incorrect, this amendment would only

potentially affect the option price during the first two years when an option is possible. Therefore, staff views this change as negligible.

**PROPOSED CHANGES TO EARLY TERMINATION FEE (IF SYSTEM IS REMOVED):**

ForeFront’s proposed changes to the early termination fee where the system is removed affects the entire duration of the contract. The table below outlines the current early termination fee compared to the proposed early termination fee, based on the system being 2.2 MW in size:

<b>CURRENT CONTRACT</b>		<b>FOREFRONT’S PROPOSED CHANGES</b>		
<b>Early Termination Occurs in Year:</b>	<b>Early Termination Fee (calculated by City staff)</b>	<b>Early Termination Occurs in Year:</b>	<b>Early Termination Fee (calculated by City staff)</b>	<b>DIFFERENCE</b>
1	\$3,300,000	1	\$3,960,000	\$660,000
2	2,420,000	2	3,410,000	990,000
3	2,222,000	3	3,256,000	1,034,000
4	2,002,000	4	3,102,000	1,100,000
5	1,804,000	5	2,948,000	1,144,000
6	1,760,000	6	2,794,000	1,034,000
7	1,716,000	7	2,772,000	1,056,000
8	1,672,000	8	2,750,000	1,078,000
9	1,628,000	9	2,728,000	1,100,000
10	1,584,000	10	2,706,000	1,122,000
11	1,540,000	11	2,684,000	1,144,000
12	1,496,000	12	2,662,000	1,166,000
13	1,452,000	13	2,662,000	1,210,000
14	1,386,000	14	2,640,000	1,254,000
15	1,342,000	15	2,618,000	1,276,000
16	1,276,000	16	2,596,000	1,320,000
17	1,210,000	17	2,596,000	1,386,000
18	1,144,000	18	2,574,000	1,430,000
19	1,078,000	19	2,552,000	1,474,000
20	1,012,000	20	2,552,000	1,540,000
21	946,000	21	2,530,000	1,584,000
22	858,000	22	2,530,000	1,672,000
23	770,000	23	2,530,000	1,760,000
24	704,000	24	2,508,000	1,804,000
25	594,000	25	2,508,000	1,914,000

The proposed changes to the Early Termination Fee schedule are significant. Since the City has signed a fully executed contract with Forefront, Staff is only considering these changes for a few reasons:

First, ForeFront has not yet secured its agreement with the tax equity partner, and needs this change to the agreement to complete its tax equity agreement. A tax equity partner is needed to “monetize” the Production Tax Credits offered by the Federal government to encourage solar development. Without the tax equity partner, the project does not cash flow, and although completed, the City’s solar farm could remain off until a new tax equity partner is found. ForeFront has indicated that there are relatively few potential tax equity partners available, and any new partner may request similar changes to Schedule 3 before they are willing to sign on.

Additionally, if ForeFront is unable to secure its remaining financing by signing a tax equity partner, ForeFront’s agreement with the City allows it to cancel without penalty prior to activating the system. A cancellation would cause considerable progress to be lost, and the City would have to consider starting over on development of a community solar project.

Finally, in signing the agreement with ForeFront, the City’s intent has always been to be in a 25-year power supply arrangement. The early termination provisions are intended to protect ForeFront and its tax equity partner in the rare event that the City wished to terminate the agreement early and have all equipment removed. **So long as the City does not terminate the agreement early, there is no change in the financial impact to the City.** In the event the City would desire to end the agreement early, the likely path would be to exercise the purchase option and continue to operate the solar farm as the owner.

Although staff’s preferred choice is to keep the contract as originally signed, agreeing to ForeFront’s requested changes will allow ForeFront to finalize its financing and allow the solar farm to move to commercial operation on December 23<sup>rd</sup>. If the changes are not made, commercial operation will be delayed until ForeFront either secures a new partner or cancels the agreement. In either case, Power Pack purchasers will not begin to receive the benefits of the solar farm until commercial operation begins.

**ALTERNATIVES:**

1. Approve the amendment to the early termination fee and option tables (Schedule 3) of the Energy Services Agreement with ForeFront Power (FFP Origination, LLC).
2. Do not approve the requested changes to the Energy Services Agreement.

**CITY MANAGER'S RECOMMENDED ACTION:**

Without the change to the Early Termination and Option Price tables, ForeFront has informed the City that it will be difficult, if not impossible, to get its tax equity partner to accept the project. The project viability will certainly suffer if ForeFront is not able to

secure their tax equity partnership before the end of the year, at which time the tax incentive applicable to the farm will depreciate. This delay would also prevent the solar farm from going into commercial operation until a new tax equity partner is acquired. This could take considerable time given the limited competition in this field due to the losses many companies are facing as a result of the COVID19 pandemic.

**These changes, though not advantageous to the City, impact options in the future that the City would very likely not pursue, as they would not be in the best interest of the City under any foreseeable circumstance.** The ways in which the City intends to proceed with this contract are not negatively affected by these changes in the contract.

Staff believes that the risk involved in accepting these amended terms is minor. The City should accept the minor risk that an unforeseeable circumstance would cause the City to pursue one of the early termination options affected by this amendment in order to support ForeFront in securing a tax equity partner in a timely manner and making sure the operation of the farm is not interrupted. This is also in the best interest of Ames electric customers participating in the community solar project who are already accumulating benefits from the solar energy production.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, as described above.

Original

**III. Schedule 3 – Early Termination Fee**

The Early Termination Fee with respect to the System under the Agreement shall be calculated in accordance with the following:

Early Termination Occurs in Year:	Column 1 Early Termination Fee where Purchaser does <u>not</u> take Title to the System (\$/Wdc including costs of removal)	Purchase Date Occurs on the 91 <sup>st</sup> day following: (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)	Column 2 Option Price (\$/Wdc)
1*	1.50		--
2	1.10		--
3	1.01		--
4	0.91		--
5	0.82		--
6	0.80	5 <sup>th</sup> Anniversary	\$0.54
7	0.78	6 <sup>th</sup> Anniversary	\$0.52
8	0.76	7 <sup>th</sup> Anniversary	\$0.50
9	0.74	8 <sup>th</sup> Anniversary	\$0.47
10	0.72	9 <sup>th</sup> Anniversary	\$0.45
11	0.70	10 <sup>th</sup> Anniversary	\$0.43
12	0.68	11 <sup>th</sup> Anniversary	\$0.41
13	0.66	12 <sup>th</sup> Anniversary	\$0.38
14	0.63	13 <sup>th</sup> Anniversary	\$0.36
15	0.61	14 <sup>th</sup> Anniversary	\$0.34
16	0.58	15 <sup>th</sup> Anniversary	\$0.31
17	0.55	16 <sup>th</sup> Anniversary	\$0.28
18	0.52	17 <sup>th</sup> Anniversary	\$0.26
19	0.49	18 <sup>th</sup> Anniversary	\$0.23
20	0.46	19 <sup>th</sup> Anniversary	\$0.20
21	0.43	20 <sup>th</sup> Anniversary	\$0.17
22	0.39	21 <sup>st</sup> Anniversary	\$0.14
23	0.35	23 <sup>rd</sup> Anniversary	\$0.11
24	0.32	24 <sup>th</sup> Anniversary	\$0.07
25	0.27	25 <sup>th</sup> Anniversary	\$0.04

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).

\*Includes Early Termination prior to the Commercial Operation Date.

EXHIBIT A

**III. Schedule 3 – Early Termination Fee**

The Early Termination Fee with respect to the System under the Agreement shall be calculated in accordance with the following:

Early Termination occurs in Year:	Column 1 Early Termination Fee where Purchase does <u>not</u> take Title to the System (\$/Wdc including costs of removal)	Purchase Date Occurs on the 91 <sup>st</sup> day following: (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)	Column 2 Option Price (\$/Wdc) <sup>a</sup>
1*	1.80		--
2	1.55		--
3	1.48		--
4	1.41		--
5	1.34		--
6	1.27	5 <sup>th</sup> Anniversary	0.77
7	1.26	6 <sup>th</sup> Anniversary	0.76
8	1.25	7 <sup>th</sup> Anniversary	0.50
9	1.24	8 <sup>th</sup> Anniversary	0.47
10	1.23	9 <sup>th</sup> Anniversary	0.45
11	1.22	10 <sup>th</sup> Anniversary	0.43
12	1.21	11 <sup>th</sup> Anniversary	0.41
13	1.21	12 <sup>th</sup> Anniversary	0.38
14	1.20	13 <sup>th</sup> Anniversary	0.36
15	1.19	14 <sup>th</sup> Anniversary	0.34
16	1.18	15 <sup>th</sup> Anniversary	0.31
17	1.18	16 <sup>th</sup> Anniversary	0.28
18	1.17	17 <sup>th</sup> Anniversary	0.26
19	1.16	18 <sup>th</sup> Anniversary	0.23
20	1.16	19 <sup>th</sup> Anniversary	0.20
21	1.15	20 <sup>th</sup> Anniversary	0.17
22	1.15	21 <sup>st</sup> Anniversary	0.14
23	1.15	22 <sup>nd</sup> Anniversary	0.11
24	1.14	23 <sup>rd</sup> Anniversary	0.07
25	1.14	24 <sup>th</sup> Anniversary	0.04

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).

\*Includes Early Termination prior to the Commercial Operation Date.