



STAFF REPORT
10/25/2023

TO: Board of Directors for the Coachella Sanitary District

FROM: Dr. Gabriel Martin, District Manager
Zachery Scalzo, City Attorney

SUBJECT: Adopt Resolution No. SD-2023-05 Authorizing the District Manager the Execution and Delivery of a Construction Access, Reimbursement & Lease Agreement with the City of Coachella and Authorizing the Taking of All Other Actions Necessary to the Consummation of the Transactions Contemplated by the this Resolution.

STAFF RECOMMENDATION:

Staff recommends that the Board of Directors (“Board”) for the Coachella Sanitary District (“District”) adopt Resolution No. SD-2023-05 authorizing the District Manager the execution and delivery of a construction access, reimbursement & lease agreement with the City of Coachella and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by the this resolution to allow the City to construct certain improvements at the District’s Wastewater Treatment Plant (“Treatment Plant”), with a maximum principal amount to be financed not to exceed **\$11,000,000** and an interest rate not to exceed 4.35%.

BACKGROUND:

On July 26, 2023, the City Council (“Council”) of the City of Coachella (“City”) adopted Resolution No. 2023-53, in which the Council made required findings pursuant to Government Code section 4217, and approved a design-build contract (“DB Contract”) with Alliance Buildings Solutions, Inc. (“Alliance”) in the amount of **\$15,429,458** (“Project Cost”). The DB Contract requires Alliance to design and construct several different types of energy conservation measures within the City (collectively, “Project”), including, the following scope of work that the City agreed to construct on behalf of the Coachella Sanitary District (“District”) at the Treatment Plant: (i) solar photovoltaic panels; and (ii) process optimization (“District Scope”). Staff estimates that the District Scope accounts for approximately \$10 million to \$11 million of the Project Cost. Additionally, Resolution No. 2023-53 conditioned the Council’s approval upon the City obtaining financing for the Project and authorized the City Manager to obtain such financing and to negotiate a financing agreement.

At the City Council’s meeting today, October 25, 2023, the City authorized the City Manager to enter into an Equipment Lease/Purchase Agreement (the “ELPA”) with Banc of America Public Capital Corp (“Bank”) to obtain financing from the Bank in an amount not to exceed the Project Cost and financing costs. If the City and the Bank close the financing for the **total** Project Cost, the City will lease the equipment installed in the Project in the amount of the Project Cost and financing costs, plus interest. The ELPA has a 20-year term (final lease payment in 2043) with an interest rate of 4.344%, and lease payments (assuming financing of the entire project and including all financings costs) total approximately \$24 million. The ELPA provides that, if the City defaults or fails to make any such payment, the Bank may repossess any equipment that is subject to the ELPA.

Since the City and District are separate legal entities, the District must agree to permit the City to design and construct the District Scope at the Treatment Plant and agree to reimburse the City for the cost of the District Scope, plus financing costs and interest. Additionally, to obtain financing, the City is required to enter into the Lease Agreement with the District to sublease the equipment constituting the District Scope to the District and bind the District to provisions of the ELPA granting the Bank a security interest in, and the right to repossess, such equipment.

DISCUSSION/ANALYSIS:

Government Code section 4217.10, et seq. permitted the City to enter into agreements to finance, design, and construct energy conservation facilities and/or energy conservation measures without any competitive solicitation or bidding process.

Government Code section 4217.12 (“Section 4217.12”) permitted the City to enter directly into an energy services contract to design and construct energy conservation facilities, if the City Council found at a regularly scheduled public hearing noticed at least two weeks in advance, 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.”

Government Code section 4217.13 (“Section 4217.13”) permitted the City to enter directly into a facility financing contract to finance the design and construction of energy conservation facilities, if the City Council found, at a regularly scheduled public hearing noticed at least two weeks in advance, that “funds for the repayment of the financing or the cost of design, construction, and operation of the energy conservation facility, or both, as required by the contract, are projected to be available from revenues resulting from sales of electricity or thermal energy from the facility or from funding that otherwise would have been used for purchase of electrical, thermal, or other energy required by the public agency in the absence of the energy conservation facility, or both.”

Through Resolution No. 2023-53, the City made all the findings required by Section 4217.12 and 4217.13. The Council further authorized the City Manager to enter into an “energy services contract” under Section 4217.12—the DB Contract—if the City secured and entered into a financing agreement for the Project Cost. The ELPA approved by the City Council today is that

financing agreement and is an approved “facility financing” contract pursuant to Section 4217.13.

The Lease Agreement is required by the City because the City must have access to the Treatment Plant for design, construction, and maintenance of the financed equipment. The Lease Agreement binds the District to do the following through the term of the ELPA (Original Term of November 2043, which term can be extended to Renewal Terms or terminated early through prepayment): (i) grant a license to the City to enter the Treatment Plant so that it can design, construct, and maintain the District Scope; (ii) agree to lease the equipment constituting the District Scope from the City and allow the Bank to repossess the equipment if the City is in breach of the ELPA due to the District not complying with the terms of the Lease Agreement; and (iii) to make installment payments to the City in an amount equal to the proportional cost of the District Scope within 30 days of the City making each bi-annual lease payment to the Bank.

District’s legal counsel has reviewed and approved the Lease Agreement as to its form.

ALTERNATIVES:

1. Not agree to the financing and separately procure the District Scope.
2. Continue the item and provide staff with direction.
3. Take no action.

FISCAL IMPACT:

In order to estimate the fiscal impact to the District of the District Scope and to finalize the lease payments in the Lease Agreement, Alliance will need to provide the City with a description of equipment; scheduled values; energy, O&M, and new renewable savings; and estimated Direct Pay Investment Tax Credit for the District Scope. The City has asked Alliance for such information on several occasions, particularly regarding the process optimization piece of the Project, but Alliance has not been able to provide that information to the City. If Alliance cannot provide the necessary information regarding the design of the process optimization portion of the District Scope, then the District may move forward with financing the solar photovoltaic panels portion of the District Scope at this time and finance the process optimization portion at a later date once Alliance has completed design.

While still working on the equipment list for the process optimization portion of the District Scope, Alliance has provided preliminary scheduled values. Based on an assumption of \$8.065 million of project cost for process optimization at the Treatment Plant, \$50,000 of allocated financing costs, and an interest rate of 4.344% over a 20-year term, the District would make total lease payments to the City of \$12.974 million. Alliance has estimated energy savings and O&M savings from Year 0 through Year 20 of the project to total \$12.729 million. Therefore, the energy and O&M savings generated from the process optimization project from Year 0 through Year 20 are projected to be lower than the costs of the project. After the Lease Agreement expires in 20 years, Alliance projects that the project will generate additional energy savings from Years 21 through 25. Alliance also includes an estimated Capital Cost Avoidance of \$1.16 million in its cash flows.

The District has outstanding debt secured by Net Revenues of the Wastewater System (including the 2005B USDA Loan, the 2005 State Water Resources Control Board Loan, the 2011 USDA Loan, and the 2015A Wastewater Revenue Bonds) under which the District is obligated to set rates and charges on an annual basis to meet certain debt service coverage requirements. Under the Lease Agreement, the District is pledging Wastewater System Net Revenues on a subordinate basis to outstanding debt. However, if Net Revenues of the Wastewater System do not meet the debt service coverage requirements or do not cover the lease payments that the District is obligated to make to the City under the Lease Agreement, the District will need to raise rates to comply with all its debt obligations. As currently estimated, the cost of the process optimization project exceeds the energy and O&M savings by approximately \$250,000. Additionally, if the City elects to enter into the Measurement and Verification Agreement with Alliance for the term of the financing, the City will pay a total of \$627,438 to Alliance for measurement and verification services of energy savings, a portion of which may be allocated to the District.

There is no guarantee that energy and O&M savings will be realized in the timing and amounts projected by Alliance; and regardless of whether any such savings come to fruition, the District remains obligated to make lease payments to the City in the amounts and on the dates described in the Lease Agreement. Should the District fail to make these payments, and the City does not step in to make the payments on behalf of the District, the Bank has the right to retake possession of the financed equipment.

ATTACHMENT(S):

1. District Resolution No. SD-2023-05
2. Lease Agreement