



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Brian M. Balbas, Public Works Director/Chief Engineer  
Date: November 29, 2022

Subject: Settlement and release agreement with SunPower Corporation, Systems – 4545 & 4549 Delta Fair Blvd;  
2530 Arnold Dr.; 1000 Ward Street

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Public Works Director, or designee, to execute on behalf of the County the attached Settlement and Release Agreement with SunPower Corporation, Systems to pay the County \$127,066 for lost energy savings due to delays in installation of solar generating and storage facilities under power purchase agreements for 4545 and 4549 Delta Fair Blvd., Antioch, and 2530 Arnold Drive and 1000 Ward Street, Martinez, as recommended by the Public Works Director.

APPROVE and AUTHORIZE the Public Works Director, to execute on behalf of the County the attached Consent and Agreement among the County, Solar Star Co Co 2, LLC, and ST TOTAL Strong Statutory Trust, to authorize the assignment of the power purchase agreements for the above four sites to ST TOTAL Strong Statutory Trust following receipt of the above payment from SunPower.

DIRECT the Public Works Director, or designee, to withdraw the County's notice of default and payment bond claim, and take related actions, following receipt of the above payment from SunPower.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

Action of Board On: **11/29/2022** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II  
Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: November 29, 2022

Monica Nino, County Administrator and Clerk of the Board of Supervisors

Contact: Jeff Acuff, Division Manager -  
Capital Projects, (925) 957-2487

By: June McHuen, Deputy

AUTHORIZE the Public Works Director, or designee, to execute any other documents required for financing or completion of construction at the four sites.

### FISCAL IMPACT:

100% incoming funds to offset increased electricity cost from missed energy savings.

### BACKGROUND:

In 2019, the County entered into power purchase agreements (PPAs) with Solar Star Co Co 1, LLC, for the installation and operation of solar generating facilities at 4545 and 4549 Delta Fair Blvd., Antioch, and 2530 Arnold Drive and 1000 Ward Street, Martinez, and additional solar storage facilities at 2530 Arnold Drive, and 1000 Ward Street. Under the PPAs, SunPower, as contractor for Solar Star, is responsible for installing the facilities. Starting with commercial operation of the facilities and continuing for a 25-year term, the County will purchase power generated by the facilities at substantially discounted rates compared to market rates charged by Pacific Gas & Electric Company. In 2020, the PPAs were assigned from Solar Star Co Co 1, LLC to Solar Star Co Co 2, LLC and Solar Star Co Co 3, LLC.

Completion of the four sites was delayed significantly due to issues within the control of Solar Star and/or SunPower. These delays, which lasted almost one year, involved issues with timely payment of subcontractors and with the design of facilities in accordance with current fire code standards. As a result of these delays, the County had to pay higher power costs for almost a year and was unable to realize energy savings and purchase discounted power at these four sites in Antioch and Martinez. To address these delays, which constituted defaults under the power purchase agreements, the County in April and May 2022 sent a notice of default and filed a payment bond claim, demanding that SunPower and its bonding company cure and correct these defaults.

Over the following months, SunPower resolved all payment defaults, resumed work in earnest on the four sites in Antioch and Martinez, and offered the County \$127,066 in compensation for the lost energy savings at the four sites. SunPower now expects that the four sites will be placed into commercial operation by November 30, 2022. Under the settlement agreement (Settlement and Release Agreement), SunPower will pay the County \$127,066 for lost energy savings at the four sites through November 30, 2022. Public Works Department staff have determined this amount is adequate to compensate the County for the difference between the higher cost of power from PG&E during the period of delay, and the lower amount the County would have paid for power under the PPAs had the sites been placed into commercial operation by the time required under those agreements. In consideration for that payment, the County will release SunPower from any claims to compensation for missed energy savings at the four sites through November 30, 2022.

As part of the financing for the four sites, SunPower will be assigning the PPAs to ST TOTAL Strong Statutory Trust as lessor, with Solar Star Co Co 2, LLC as lessee, and requires the County's consent to that assignment. The consent to the assignment (Consent and Agreement) provides that there are no outstanding defaults and that the County has no credits or offsets for the County's purchase of energy under the PPAs. Therefore, the Public Works Director, or designee, will be in a position to execute the Consent and Agreement

when the County receives payment under the settlement agreement.

With the four sites now nearing completion, Public Works Department staff have determined that there are no outstanding defaults other than the missed energy savings and that the above payment is adequate to compensate the County for those missed savings through November 30, 2022. For these reasons, the Public Works Director recommends that the Board approve the settlement agreement and authorize the execution of the consent to assignment of the PPAs following receipt of the settlement payment from SunPower.

CONSEQUENCE OF NEGATIVE ACTION:

The County would not be compensated for missed energy savings and SunPower would be unable to assign the power purchase agreements, thereby further delaying commercial operation of the four sites.