



Contract Number: CT. PR. 14 * 355-02
Effective Date : 11-18-14
Term Date : 3-17-2039
Cost : ✓
Revenue : _____
Total : _____ NTE: _____
Action
Renewal By : 12-1-2038
Term : 3-17-2039
Reviewed by: ✓

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: November 18, 2014

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

This Acknowledgement & Consent confirms the original agreements are still in effect, there aren't any defaults under the agreements and consents to the assignment of the originals agreements.

CONTRACT NUMBER (If applicable) CTN PR 14*355

STAFF RECOMMENDATION(S): Staff recommends approval.

CORPORATE HEADQUARTERS: _____

Page 1 of 2

Procure Dept 11/12/14 PM 01:45

Ver. - 2
Vendor - 1
Pgs. - 7

CNH - 11-12-14 By Pay
To: CoB - 11-13-14
Agenda 11-18-14
Addendum (4)

CLERK OF BOARD USE ONLY: BOS MTG. _____

ITEM NO. _____

REVENUE TO PIMA COUNTY: _____ COST TO PIMA COUNTY: \$ _____

FUNDING SOURCE(S): _____
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

		YES	X	NO
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Board of Supervisors District:

1		2	X	3		4		5		All	
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IMPACT:

IF APPROVED:

Will allow the investment for the construction of the solar array system located at 7770 N Shannon Road in Tucson.

IF DENIED:

Will not allow the investment for the construction of the solar array system located at 7770 N Shannon Road in Tucson to proceed.

DEPARTMENT NAME: NRPR

CONTACT PERSON: Robert Padilla TELEPHONE NO.: 724-5235

SunE Solar XVI Lessor, LLC
c/o SunEdison
ATTN: Legal Department
12500 Baltimore Avenue
Beltsville, MD 02705

- (e) The YMCA and County agree to make all payments due to the Lessee under the Agreements to an account identified from time to time in accordance with the instructions provided by the Lessor.

2. Confirmation. The YMCA and/or County (as the case may be) confirm the following matters for the benefit of each of the Lessee and the Lessor:

- (a) To the YMCA's knowledge, there exists no default and no event or condition that would, with the giving of notice or lapse of time, constitute a default, under the Agreements. To County's knowledge, there exists no default and no event or condition that would, with the giving of notice or lapse of time, constitute a default, under the Agreements. County is the prevailing party in that certain quiet title action, Pima County Superior Court Case No. 331842, and there exists no event or condition related to such quiet title action that would, with the giving of notice or lapse of time, result in the termination, cancellation or modification of that certain Ground Lease Agreement by and between County and YMCA dated as of June 15, 1999, including any amendments, modifications or restatements thereof.
- (b) The Agreements are in full force and effect and there are no other agreements or representations of any kind between the YMCA, County and Seller as to the subject matter of the Agreements; and each of the YMCA and County agree that it will not make material amendments or modifications to the Agreements, or terminate, or (except as expressly provided in the Agreements) renew or extend the Agreements without prior written consent from the Lessor.
- (c) The YMCA and County will use commercially reasonable efforts to place their successors, assigns, and lien holders on notice of (i) the interest of the Lessor in the Solar Energy Facility as Seller's assignee, (ii) the leasehold interest granted to the Lessee described in Section 1.(a)(ii) above, and (iii) the security interest described in Section 1.(a)(iii) above in favor of the Lessor.

Neither this Acknowledgement nor any of the terms hereof may be amended, terminated, supplemented, waived or modified, except pursuant to a written instrument executed by each of the Lessor, Lessee, Seller, County and the YMCA.

3. Representations and Warranties.

- (a) Seller and Lessor hereby jointly and severally represent and warrant for the benefit of YMCA and County that Lessor (i) has both the financial capacity and the technical and relevant industry knowledge, experience and ability to fully and completely perform the obligations required under the Agreements, and (ii) is willing and sufficiently funded in order to assume the indemnification obligations set forth in the Agreements.

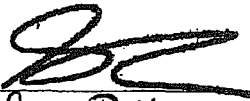
- (b) Seller and Lessor further jointly and severally represent and warrant for the benefit of YMCA and County that Lessor shall not take any remedial action with respect to, nor assume, sell or otherwise dispose of, the Agreements and/or the Solar Energy Facility, or any part or portion thereof or interest therein (whether by foreclosure sale, conveyance in lieu of foreclosure, judicial proceeding, power of sale, conveyance or otherwise) unless, on or before the date of any such action, assumption, sale or disposition, Lessor shall give written notice to the YMCA and County of such action, and Lessor and/or any applicable third party, as the case may be, receiving, assuming, purchasing or otherwise acquiring the Agreements and/or the Solar Energy Facility, or any interest therein, is willing and capable of fulfilling, and expressly so agrees in writing to fulfill and perform, Lessor's financial and System (as defined in the SSA) management obligations under the Agreement.
- (c) Lessee hereby represents and warrants for the benefit of YMCA and County that Lessee has (including through valid, binding and enforceable contracts with entities having such capabilities or otherwise) the financial capacity (including access to sufficient funding) and the technical and relevant industry knowledge, experience and ability to fully and completely perform the obligations under the Agreements (including the indemnification obligations thereunder).

IN WITNESS WHEREOF, each of the undersigned, by its officer thereunto duly authorized, has expressly agreed to each and all of the provisions hereof, and does duly execute this Acknowledgment and Consent as of the date first above written.

[signature pages follow]

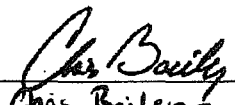
SELLER:

SUNEDISON ORINATION1, LLC

By: 
Name: Sujay Prithi
Title: Authorized Representative

LESSOR:

SUNE SOLAR XVI LESSOR, LLC

By: 
Name: Chris Bailey
Title: Authorized Representative

LESSEE:

DG SOLAR LESSEE II, LLC

By: SunE Solar XVI Manager, LLC, as
Manager

By: _____

Name: _____

Title: Authorized Representative

Re: Solar Energy Facility located at 7770 N Shannon Rd

COUNTY:
PIMA COUNTY

By: _____
Name: _____
Title: Chair, Board of Supervisors

ATTEST:

By: _____
Name: Robin Brigode
Title: Clerk of the Board of Supervisors

APPROVED AS TO CONTENT:

By: *Robert Padilla*
Name: Robert Padilla
Title: Deputy Director, Natural Resources, Parks &
Recreation Department

APPROVED AS TO FORM

TOBIN ROSEN

[Signature]
Deputy County Attorney

YMCA:

YMCA OF SOUTHERN ARIZONA

By: Dane Woll

Name: Dane Woll

Title: President and CEO