



Contract Number: CT-PR-14\*355-02  
Effective Date: 11-18-14  
Term Date: 3-17-2039  
Cost: ✓  
Revenue: ✓  
Total: ✓ NTE: \_\_\_\_\_  
Action: 12-1-2038  
Renewal By: ✓  
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 PM0145

Ver. - 2  
Vendor - 1  
Pgs. - 7

To: C.O.D. - 11-13-14  
Agenda 11-18-14  
Addendum (4)

CHH - 11-12-14 By Pay

**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:**

	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
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**Board of Supervisors District:**

1		2	<input checked="" type="checkbox"/>	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

## Acknowledgment and Consent

This number must appear on all invoices, correspondence and documents pertaining to this contract.

This Acknowledgment and Consent, dated as of \_\_\_\_\_, 2014 (this "Acknowledgment"), is made by and among YMCA of Southern Arizona (the "YMCA"), Pima County ("County"), and the other signatories hereto with reference to (i) that certain Solar Services Agreement dated as of March 18, 2014, including any amendments, modifications or restatements (the "SSA") between the YMCA, County and SunEdison Origination1, LLC (the Seller), as assignee of Solon YMCA NW, LLC, and (ii) that certain Solar License Agreement dated as of March 18, 2014, including any amendments, modifications or restatements (the "SLA", and together with the SSA, the "Agreements") This Acknowledgment is provided pursuant to Section 18 of the SSA and Section 12.10 of the SLA to each of (a) DG Solar Lessee II, LLC (the "Lessee"), who is investing in the Solar Energy Facility (as defined below) and who entered into a master lease agreement with SunE Solar XVI Lessor, LLC ("Lessor"), as amended, amended and restated, modified or supplemented from time to time (the "MLA") to lease the Solar Energy Facility pursuant to a lease supplement issued thereunder (a "Lease Supplement") and (b) the Lessor. Capitalized terms not otherwise defined herein have the meaning in the SSA.

The solar photovoltaic system (the "Solar Energy Facility") is hereby understood to be the system installed, operated and maintained by Seller pursuant to the Agreements and located at 7770 N Shannon Rd, Tucson, AZ.

### 1. Acknowledgments.

- (a) Effective as of the date of this Acknowledgement, the YMCA and County acknowledge and consent to: (i) the direct assignment of the Agreements from the Seller to its affiliate, the Lessor, (ii) effective as of the date a Lease Supplement is delivered pursuant to the terms of the MLA with respect to the Solar Energy Facility, the subsequent direct assignment of the Agreements from the Lessor to the Lessee solely for the term of the lease of the Solar Energy Facility, and (iii) the collateral assignment by Lessee to Lessor, of Lessee's right, title and interest in, to and under the Agreements to secure Lessee's obligations to Lessor under the MLA.
- (b) The YMCA and County acknowledge and agree that the Solar Energy Facility is personal property and not a fixture.
- (c) The YMCA and County agree and acknowledge that upon the expiration or termination of the lease of the Solar Energy Facility, the Lessee's right, title and interest in, to and under the Agreements shall be automatically assigned back to the Lessor, without any further consent required from the YMCA or County, provided that Lessor gives prompt written notice of same to YMCA and County.
- (d) Until further written notice from the Lessor, the YMCA and County agree to give each notice of default under the Agreements simultaneously to Seller and the Lessor at the following address:

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).

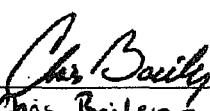
IN WITNESS WHEREOF, each of the undersigned, by its officer thereunto duly authorized, has expressly agreed to each and all of the provisions hereof, and does duly execute this Acknowledgment and Consent as of the date first above written.

*[signature pages follow]*

**SELLER:**  
SUNEDISON ORIGINATION1, LLC

By:   
Name: Sujay Parikh  
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: *Chris Bailey*  
Name: *Chris Bailey*  
Title: Authorized Representative

**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**

Deputy County Attorney

**YMCA:**

YMCA OF SOUTHERN ARIZONA  
By: Dane Woll  
Name: Dane Woll  
Title: President and CEO