

Contract Number: CT-PR-14 * 355-01
 Effective Date : 11-18-14
 Term Date : 8-17-2039
 Cost : ☒
 Revenue : ☐
 Total : ☐ NTE: ☐
 Action
 Renewal By : 12-1-2039
 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 amendment contains documents involving the transfer of the solar system to a related entity and are also needed by the lender in conjunction with the financing of the solar installation. These documents do not affect the substance of the underlying agreements for the solar arrays themselves.

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 PM01:44

Ver. 2
Vendor - 1
Pgs. - 5

To: CHH- 11-15-14 By Dept
COB- 11-13-14
(4) Agenda 11-18-14
Addendum

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 facilitate financing of the solar array system.

IF DENIED:

Will not facilitate financing of the solar array system.

DEPARTMENT NAME: NRPR

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

CONTRACT	
NO CT-PR-14000000000000000000355	
AMENDMENT NO.	01
This number must appear on all invoices, correspondence and documents pertaining to this	
AMENDMENT AND WAIVER AGREEMENT	

NORTHWEST YMCA

This AMENDMENT AND WAIVER AGREEMENT (this "Agreement") is entered into as of November ____, 2014 by and among SUNEDISON ORIGINATION1, LLC ("SunEdison"), YMCA OF SOUTHERN ARIZONA ("YMCA") and PIMA COUNTY (the "Site Owner", and together with SunEdison and YMCA, the "Parties").

RECITALS

WHEREAS, SunEdison (as assignee of Solon YMCA NW, LLC ("Solon")), YMCA and the Site Owner are parties to (a) that certain Solar Services Agreement dated March 18, 2014 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "SSA") and (b) that certain Solar License Agreement dated March 18, 2014 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "SLA", and together with the SSA, the "Agreements").

WHEREAS, the Parties wish to amend the SSA, all on the terms and conditions set forth in this Agreement.

WHEREAS, the Parties wish to waive certain provisions of the Agreements solely in connection with the assignment of the Agreements from Solon to SunEdison on March 20, 2014, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises set forth above, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto hereby agree as follows:

1. DEFINITIONS

Capitalized terms used but not defined in this Agreement have the meanings ascribed to them in the SSA.

2. AMENDMENT

The fourth paragraph of Exhibit 4 (Termination Fee Schedule and Purchase Option) of the SSA is hereby amended as follows to add the language shown underlined and in bold and delete the language shown as stricken:

If an early termination occurs on a date other than an anniversary of the Commercial Operation Date, the ~~applicable unpaid amount for that year~~ **Termination Fee** will be calculated by (a) multiplying the Termination Fee (i) the difference between the following year's Early Termination Payment as set forth in the table below and the current year's Early Termination Payment as set forth in the table below by (ii) a simple ratio of the number of months remaining in the current year from the date of such termination until the anniversary of the Commercial Operation Date divided by 12 months and (b) adding such amount to the following year's Early Termination Payment as set forth in the table below.

3. WAIVER AND RATIFICATION

- (a) Each of YMCA and the Site Owner hereby waive (i) the requirement of the penultimate sentence of Section 7.2.6 of the SLA and (ii) the requirement of providing YMCA at least thirty (30) business days' prior written notice of the assignment under Section 18 of the SSA, in each case, solely with respect to the assignment of the Agreements from Solon to SunEdison on March 20, 2014. Such waivers shall not be construed as a waiver of any other provision of the Agreements.
- (b) Each of YMCA and the Site Owner hereby ratify the assignment of the Agreements from Solon to SunEdison on March 20, 2014, effective as of the date of such assignment. SunEdison hereby represents and warrants for the benefit of YMCA and the Site Owner that SunEdison and its agent and contractor, NVT Licenses, LLC, (i) have 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) are willing and sufficiently funded in order to assume the indemnification obligations set forth in the SSA.

4. MISCELLANEOUS

- (a) The amendment set forth in Section 2 above is limited in effect and shall apply only as expressly set forth in this Agreement and shall not constitute a modification, waiver or amendment of any other provision of the SSA. The SSA is modified only by the express provisions of this Agreement, and shall as so modified remain in full force and effect and is hereby ratified and confirmed by the Parties hereto in all respects.
- (b) This Agreement is governed by and shall be interpreted in accordance with the laws of the State of Arizona. All actions by the Parties relating to this Agreement must be brought and heard in the Pima County Superior Court.
- (c) In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
- (d) The headings of the several sections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.
- (e) This Agreement may be executed in multiple copies each of which shall be deemed an original, but all of which shall together constitute one agreement after each Party has signed such a counterpart.


THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

NORTHWEST YMCA

IN WITNESS WHEREOF, each of the undersigned by its officer thereunto duly authorized, has duly executed this Agreement as of the date first above written.

SUNEDISON ORIGINATION1, LLC

By: _____



Name: Sujay Parikh

Title: Authorized Representative

YMCA OF SOUTHERN ARIZONA

By: Dane Wall, President/CEO
Name:
Title:

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