



BOARD OF SUPERVISORS AGENDA ITEM REPORT **CONTRACTS / AWARDS / GRANTS**

Requested Board Meeting Date: April 19, 2016

or Procurement Director Award ☐

Contractor/Vendor Name (DBA): Solon Development LLC

Project Title/Description:

Solar Covered Parking Structure Juvenile Court Meter 1

Purpose:

Amendment of Award of Contract: Master Agreement No. MA-PO-16-088 Version 3. This amendment is being processed to provide COUNTY consent for SUNE DB28, LLC's assignment of all contracted responsibilities, obligations and rights to Solon Development LLC; to document the reduced energy production of the "As Constructed" facility and NTE amount from \$5,660,815.00 to \$2,147,982.00; to modify and replace SSA Exhibit 4: Termination Fee Schedule; SLA Exhibit III: Equipment List; and Section 18.7 of Article 18 Assignment of the Solar Service Agreement (SSA) to facilitate future Assignments.

Administering Department: Facilities Management.

Attached: MA-PO-16-088 Version 3 and Amendment No. 3.

BACKGROUND:

On May 5, 2015 the Board of Supervisors approved the award of a twenty (20) year contract, MA -PO-15-293 Version 1, to Solon Development LLC to design, finance, construct, operate and maintain solar facilities located on Pima County property to provide electricity to the Juvenile Court Meter 1 in an award amount of \$5,660,815.00.

On November 10, 2015 the Board of Supervisors approved the First Amendment to the Agreement document with an effective date of October 20, 2015 which assigned all contracted responsibilities, obligations and rights from Solon Development LLC to an affiliate of SunEdison, Inc., SUNE DB28, LLC on MA-PO-16-088 Version 1.

On December 15, 2015 the Board of Supervisors approved the Second Amendment to the Agreement to delete reference to a Purchase Option, in Section 3 (Term and Termination) and to add an effective start date to Section 18.6 (Assignment by County) that was not included in the original Solar Service Agreement (SSA) on MA-PO-16-088 Version 2.

Procurement Method:

Not Applicable

Program Goals/Predicted Outcomes:

To reduce Pima County's electricity & operational costs & provide shaded parking for employees and members of the public. The expenditures do not increase general fund expenses, they displace expenditures that would otherwise be paid to TEP and avoid future TEP rate increase(s).

Public Benefit:

Reduction in Pima County's operational costs.

Metrics Available to Measure Performance:

Contractors delivery of kilowatt hours of electricity to the Juvenile Court Meter 1 each month shall be monitored by Facilities Management Department (FMD).

Retroactive:

Yes; to be effective on the same date that Sun Edison assigned and Solon accepted all contractual obligations.

Procure Dept 04/06/15 PM 02:10

Original Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Effective Date: _____ Termination Date: _____ Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount: \$ _____ ☐ Revenue Amount: \$ _____
Funding Source(s): _____

Cost to Pima County General Fund: _____

Contract is fully or partially funded with Federal Funds? ☐ Yes ☐ No ☐ Not Applicable to Grant Awards
Were insurance or indemnity clauses modified? ☐ Yes ☐ No ☐ Not Applicable to Grant Awards
Vendor is using a Social Security Number? ☐ Yes ☐ No ☐ Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment Information

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 16-088
Amendment No.: _____ AMS Version No.: V3
Effective Date: 03/24/2016 New Termination Date: _____
☒ Expense ☐ Revenue ☐ Increase ☒ Decrease Amount This Amendment: \$ (3,512,833.00)
Funding Source(s): General Fund

Cost to Pima County General Fund: _____

Contact: John Nanosky J.N. 4/4/16 4/4/16
Department: Procurement 4/4/16 Telephone: 520-724-8165
Department Director Signature/Date: [Signature] 4/4/16
Deputy County Administrator Signature/Date: [Signature] 4-6-16
County Administrator Signature/Date: [Signature] 4/6/16
(Required for Board Agenda/Addendum Items)



MASTER AGREEMENT

PIMA COUNTY, ARIZONA

THIS IS NOT AN ORDER - TRANSMISSION CONSTITUTES CONTRACT EXECUTION

Master Agreement No: 1600000000000000088

MA Version: 3

Page: 1

Description: Solar Covered Parking Structure Juvenile Court Meter 1

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Pima County Procurement Department
130 W. Congress St. 3rd Fl
Tucson AZ 85701

Issued By: JOHN NANOSKY
Phone: 5207248165
Email: john.nanosky@pima.gov

T
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Initiation Date: 03-24-2016
Expiration Date: 05-04-2035

NTE Amount: \$2,147,982.00
Used Amount: \$0.00

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SOLON Development LLC

3840 S Palo Verde Rd #205

Tucson AZ 85714

Contact: Luke Alm
Phone: 602-390-6002
Email: luke.alm@solonamerica.com
Terms: 0.0000 %
Days: 30

Shipping Method:

Delivery Type: STANDARD GROUND

FOB:

Modification Reason

Amendment of Award of Contract: Master Agreement No. MA-PO-16-088 Version 3. This amendment is being processed to provide COUNTY consent for SUNE DB28, LLC's assignment of all contractual responsibilities, obligations and rights to Solon Development LLC; to reflect the reduced energy production of the "As Constructed" facility and NTE amount from \$5,660,815.00 to \$2,147,982.00; to modify and replace SSA Exhibit A: Termination Fee Schedule; SLA Exhibit III: Equipment List; and Section 18.7 of Article 18 Assignment of the Solar Service Agreement (SSA) to facilitate future Assignments.. Attachment: MA-PO-16-088_BOSAIR_AM3_Juvenile Court Meter 1

This Master Agreement incorporates the attached documents, and by reference all instructions, Standard Terms and Conditions, Special Terms and Conditions, and requirements that are included in or referenced by the solicitation documents used to establish this agreement. All Transactions and conduct are required to conform to these documents.



MASTER AGREEMENT DETAILS

Master Agreement No: 16000000000000000088

MA Version: 3

Page: 2

Line	Description	UOM	Unit Price	Stock Code	VPN	MPN
1	Solar Covered Parking Structure Juvenile Cort Meter 1	KW	\$0.128			
	Discount 0.0000 %					

<p>PIMA COUNTY DEPARTMENT OF FACILITIES MANAGEMENT</p> <p>PROJECT: SOLAR COVERED PARKING STRUCTURE JUVENILE COURT METER 1</p> <p>CONTRACTOR: SOLON DEVELOPMENT LLC</p> <p>CONTRACT NO.: MA-PO-16-088 VERSION 3</p> <p>CONTRACT AMENDMENT NO.: THREE (#03)</p>	<table border="1"> <tr> <th data-bbox="954 218 1458 268">CONTRACT</th> </tr> <tr> <td data-bbox="954 268 1458 319">NO. <u>MA-PO-16-088</u></td> </tr> <tr> <td data-bbox="954 319 1458 369">AMENDMENT NO. <u>03</u></td> </tr> <tr> <td data-bbox="954 369 1458 478">This number must appear on all invoices, correspondence and documents pertaining to this contract.</td> </tr> </table>	CONTRACT	NO. <u>MA-PO-16-088</u>	AMENDMENT NO. <u>03</u>	This number must appear on all invoices, correspondence and documents pertaining to this contract.
CONTRACT					
NO. <u>MA-PO-16-088</u>					
AMENDMENT NO. <u>03</u>					
This number must appear on all invoices, correspondence and documents pertaining to this contract.					

ORIG. CONTRACT TERM: 05/05/2015 - 05/04/2035	ORIG. CONTRACT AMOUNT: \$5,660,815.00
TERMINATION DATE PRIOR AMENDMENT: 05/04/35	PRIOR AMENDMENTS: \$ 0.00
TERMINATION THIS AMENDMENT: 05/04/35	AMOUNT THIS AMENDMENT: \$(3,512,833.00)
	REVISED CONTRACT AMOUNT: \$ 2,147,982.00

CONTRACT AMENDMENT

WHEREAS, Pima County (COUNTY) and SUNE DB28, LLC (CURRENT CONTRACTOR) entered into the Solar Service Agreement (SSA) and Solar License Agreement (SLA) for services as referenced above; and

WHEREAS, the CURRENT CONTRACTOR has executed an agreement with Solon Development LLC (CONTRACTOR) pursuant to "Article 18-Assignment" of the SSA to assign all of the CURRENT CONTRACTOR's responsibilities, obligations, and rights under the SSA and the SLA to CONTRACTOR and said Article 18 requires COUNTY's consent to the assignment; and

WHEREAS, during construction of the project the CURRENT CONTRACTOR and COUNTY approved modification of the initial design and have agreed to modify the Expected Performance Output, Guaranteed Performance Output, Termination Fee Schedule, and Requirements of the System, including equipment, and contract amount to allow payment for the continued provision of products and services during the term of the SSA and SLA; and

WHEREAS, CONTRACTOR and COUNTY have agreed to amend Article 18 Assignment, Section 18.7 of the SSA to enable and facilitate future financing assignments of the SSA and the SLA without need for a formal amendment to be processed by COUNTY.

NOW, THEREFORE, the parties agree as follows:

COUNTY consents to the assignment of all of the CURRENT CONTRACTOR's responsibilities, obligations, and rights defined by the SSA and the SLA to Solon Development LLC (CONTRACTOR) and release CURRENT CONTRACTOR of liability and obligations under the SSA and SLA.

DELETE & REPLACE: SSA Exhibit 1 A: Expected & Guaranteed Performance Output for Juvenile Court Meter 1 with Exhibit 1 A-1: Expected & Guaranteed Performance Output for Juvenile Court Meter 1(Attached, 1-page).

DELETE & REPLACE: SSA Exhibit 4: TERMINATION FEE SCHEDULE with Exhibit 4-1 TERMINATION FEE SCHEDULE (Attached 1-page).

DELETE & REPLACE: Exhibit "III" (to SLA) with Exhibit "III-1" (to SLA) (Attached 1-page).

DELETE & REPLACE: Section 18.7 of Article 18 Assignment of the SSA with the following language:

“18.7 Assignments to Affiliates. Notwithstanding anything to the contrary contained in this Agreement (including this Article 18) or the SLA, (i) any Licensee may assign (including, without limitation, by way of a change of control) this Agreement and the SLA for the underlying purpose of financing a solar project, regardless of the form of the financing assignment transaction (including but not limited to a loan, sale, lease, sale and leaseback or other transaction) without the consent of County so long as the occurrence of any such assignment will not in any way limit the rights granted to the County, and (ii) SOLON Corporation or its subsidiaries maintains responsibility to engineer, procure, and construct the solar facility contemplated in this agreement. Any Licensee making an assignment pursuant to this paragraph will promptly notify County in writing of such assignment and will provide County the name of the entity to which the assignment has been made.”

The parties may execute this Amendment in separate counterparts, none of which need contain the signatures of all Parties, each of which is an original, and all of which taken together constitute one and the same instrument. Any executed counterpart delivered by facsimile, Adobe Acrobat (PDF) or other electronic means constitutes an original for all purposes.

The laws of the State of Arizona govern this Amendment. Any action to be brought pursuant to this Amendment must be filed and maintained in the Superior Court of the State of Arizona in Pima County.

Except for the terms expressly modified by this Amendment and by previously executed Amendments, the Parties are not amending or modifying any other terms or conditions of the SSA or SLA. All other terms and conditions of the SSA and SLA remain in full force and effect and are binding upon the Parties.

The effective date of this Amendment is March 24, 2016.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)


IN WITNESS WHEREOF, the parties have affixed their signatures to this Amendment on the dates written below.

APPROVED:

Chair, Board of Supervisors

Date

CONTRACTOR:



Signature

Brian Seibel, General Manager
Name and Title (Please Print)

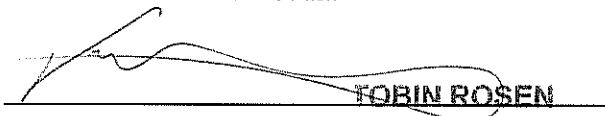
4/4/16
Date

ATTEST

Clerk of Board

Date

APPROVED AS TO FORM:

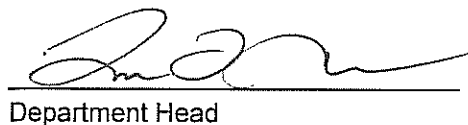


TOBIN ROSEN

Deputy County Attorney

4/4/16
Date

APPROVED AS TO CONTENT



Department Head

4/4/16
Date

Exhibit 1 A-1

Expected & Guaranteed Performance Output for Juvenile Court Meter 1

- a. The actual Expected Performance Output (kWh) (Column A) shall not exceed in any given year 2,539,440 kWh
- b. The Guaranteed Minimum Output (kWh) (Column B) shall be calculated at a minimum of 85% of Expected Performance Output (Column A); a greater percentage is acceptable.
- c. First year Expected Performance Output will be calculated for the 12-month period that commences on the Commercial Operation Date defined by Section 6.3 of the SLA and Exhibit VIII.
- d. The actual cost of electricity purchase from the utility during the last 12 months February 2014 and Ending February 2015 for Juvenile Courts Building 1 was approximately \$.113/kWh.
- e. The Total for Column C (Average weighted SSA price of Guaranteed Minimum Output) shall be calculated as the Total of Column E divided by the Total of Column B.

Column	A	B	C	D	E	F	G	H
YEAR	Expected Performance Output (kWh)	Guaranteed Minimum Output (kWh)	Supplier Price (\$/kWh)	Total Annual Cost for Expected Performance. Output Electricity (\$) from Supplier Columns (A X C)	Total Annual Cost For Guaranteed Electricity (\$) From Supplier Columns (B X C)	Est.TEP Cost \$/kWh+3%/year	Total Annual Cost For Guaranteed Electricity (\$) From TEP Columns (B X F)	Pima County Savings per year Columns (G-E)
1	879,610	747,668	\$0.1280	\$112,590	\$95,702	\$0.1130	\$84,487	-\$11,215
2	875,212	735,178	\$0.1280	\$112,027	\$94,103	\$0.1164	\$85,567	-\$8,535
3	870,836	731,502	\$0.1280	\$111,467	\$93,632	\$0.1199	\$87,694	-\$5,939
4	866,481	727,844	\$0.1280	\$110,910	\$93,164	\$0.1235	\$89,873	-\$3,291
5	862,149	724,205	\$0.1280	\$110,355	\$92,698	\$0.1272	\$92,106	-\$592
6	857,838	720,584	\$0.1280	\$109,803	\$92,235	\$0.1310	\$94,395	\$2,160
7	853,549	716,981	\$0.1280	\$109,254	\$91,774	\$0.1349	\$96,741	\$4,967
8	849,281	713,396	\$0.1280	\$108,708	\$91,315	\$0.1390	\$99,145	\$7,830
9	845,035	709,829	\$0.1280	\$108,164	\$90,858	\$0.1431	\$101,609	\$10,750
10	840,810	706,280	\$0.1280	\$107,624	\$90,404	\$0.1474	\$104,134	\$13,730
11	836,606	702,749	\$0.1280	\$107,086	\$89,952	\$0.1519	\$106,721	\$16,769
12	832,423	699,235	\$0.1280	\$106,550	\$89,502	\$0.1564	\$109,373	\$19,871
13	828,261	695,739	\$0.1280	\$106,017	\$89,055	\$0.1611	\$112,091	\$23,037
14	824,119	692,260	\$0.1280	\$105,487	\$88,609	\$0.1659	\$114,877	\$26,267
15	819,999	688,799	\$0.1280	\$104,960	\$88,166	\$0.1709	\$117,731	\$29,565
16	815,899	685,355	\$0.1280	\$104,435	\$87,725	\$0.1761	\$120,657	\$32,932
17	811,819	681,928	\$0.1280	\$103,913	\$87,287	\$0.1813	\$123,655	\$36,368
18	807,760	678,518	\$0.1280	\$103,393	\$86,850	\$0.1868	\$126,728	\$39,878
19	803,721	675,126	\$0.1280	\$102,876	\$86,416	\$0.1924	\$129,877	\$43,461
20	799,703	671,750	\$0.1280	\$102,362	\$85,984	\$0.1981	\$133,105	\$47,121
Total	16,781,110	14,104,929	\$0.1280	\$2,147,982	\$1,805,431	\$0.1518	\$2,130,565	\$325,134

EXHIBIT 4-1

TERMINATION FEE SCHEDULE

In the event of a termination of this SSA pursuant to 3.1.2, 11.4.1, 11.4.4 as limited by Section 11.5.2, 11.4.6 as limited by Section 11.5.1, or otherwise as compensation under Section 13.2, 14 or 18.6 COUNTY shall pay to LICENSEE an Early termination payment corresponding to the year in which early termination occurs.

The Early Termination Payment shall be calculated as described below and specifically set forth in the second column of the table below.

Early Termination Payment = Net Present Value of the annual contract price (per site) multiplied by the Guaranteed minimum Output, less the operating costs avoided due to the early termination, for each of the remaining years of the contract. The Early Termination Payment is also intended to include the amount of "recapture" damages imposed by the Internal Revenue Service upon LICENSEE (or its assigns or successors) in connection with the Investment Tax Credit (or related cash grants) as a result of an early termination by COUNTY.

If an early termination occurs on a date other than an anniversary of the Commercial Operation Date, the unpaid amount for that year will be calculated by multiplying the Early Termination Payment by a simple ratio of the number of months remaining until the anniversary of the Commercial Operation Date divided by 12 months.

YEAR OF TERMINATION	EARLY TERMINATION PAYMENT
1	\$2,073,683
2	\$1,967,683
3	\$1,818,501
4	\$1,711,148
5	\$1,619,148
6	\$1,107,467
7	\$1,042,740
8	\$989,845
9	\$936,689
10	\$883,134
11	\$829,249
12	\$775,199
13	\$724,916
14	\$674,313
15	\$623,464
16	\$572,563
17	\$521,872
18	\$471,084
19	\$420,077
20	\$368,859

Exhibit "III-1" (to SLA)

Requirements of System, including Equipment

System comprised of the following components:

- Approximately__1,584____solar modules
- Approximately__406_____ kW Inverter
- Associated equipment to assemble the above components into a working system