



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

Requested Board Meeting Date: February 21, 2017

or Procurement Director Award

Contractor/Vendor Name (DBA): SUNE DB35, LLC

Project Title/Description:

Solar Covered Parking Structure for Juvenile Court Meter 2

Purpose:

Amendment of Award of Contract: Master Agreement No. MA-PO-16-089 Amendment No. 3. This amendment is being processed to provide consent for SUNE DB35, 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 not-to-exceed amount by \$1,607,076.00 from \$4,470,610.00 to \$2,863,534.00; to delete and replace Exhibit 1: Expected & Guaranteed Performance Output, Exhibit 4: Termination Fee Schedule, SLA Exhibit III: System and Equipment List; and to replace Section 18.7 of Article 18 Assignment of the Solar Service Agreement (SSA) to facilitate future Assignments. This amendment is essentially to "true-up" the original estimate to the final constructed production levels.

Administering Department Facilities Management.

Procurement Method:

Pursuant to Pima County Procurement Code 11.12.060, Limited Competition Procurement, SOLON Development, LLC was selected as the contractor for Solar Covered Parking Structures by the Facilities Management Department. On May 5, 2015, the Board of Supervisors approved the award of a twenty (20) year contract on MA-PO-15-294 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 2 in an award amount of \$4,470,610.00.

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 SUNE DB35, LLC, an affiliate of SunEdison, Inc. (MA-PO-16-089).

On December 15, 2015, the Board of Supervisors approved the Second Amendment to delete reference to a Purchase Option (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).

PRCUID: 177582

Attachment: Amendment No. 3.

Program Goals/Predicted Outcomes:

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

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 2 each month shall be monitored by Facilities Management Department.

Retroactive:

No.

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*089

Amendment No.: 3 AMS Version No.: V6

Effective Date: 2/21/2017 New Termination Date: _____

Expense Revenue Increase Decrease Amount This Amendment: \$ (1,607,076.00)

Funding Source(s): General Fund

Cost to Pima County General Fund: \$(1,607,076.00)

Contact: John Nanosky JN 2/6/17 Amendy 2/6/17

Department: Procurement May 2/6/17 Telephone: 520-724-8165

Department Director Signature/Date: [Signature] 2/7/17

Deputy County Administrator Signature/Date: [Signature]

County Administrator Signature/Date: C. DeWitt 2/7/17
(Required for Board Agenda/Addendum Items)

**PIMA COUNTY DEPARTMENT OF FACILITIES
MANAGEMENT**

**PROJECT: SOLAR COVERED PARKING STRUCTURE
Juvenile Court Meter 2**

CONTRACTOR: SUNE DB35, LLC

CONTRACT NO.: MA-PO-16-089

CONTRACT AMENDMENT NO.: THREE (#03)

CONTRACT
NO. <u>MA-PO-16-089</u>
AMENDMENT NO. <u>3</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: \$4,470,610.00
TERMINATION DATE PRIOR AMENDMENT: 05/04/35	PRIOR AMENDMENTS: \$ 0.00
TERMINATION THIS AMENDMENT: 05/04/35	AMOUNT THIS AMENDMENT: \$(1,607,076.00)
	REVISED CONTRACT AMOUNT: \$2,863,534.00

CONTRACT AMENDMENT

WHEREAS, Pima County (COUNTY) and SOLON Development, LLC originally entered into the Solar Service Agreement (SSA) and Solar License Agreement (SLA) for services referenced above; and

WHEREAS, SOLON Development, LLC previously executed an agreement with SUNE DB35, LLC, (CURRENT CONTRACTOR) pursuant to "Article 18-Assignment" of the SSA to assign all of SOLON Development, LLC responsibilities, obligations, and rights under the SSA and the SLA to SUNE DB35, LLC and said Article 18 requires COUNTY's consent to the assignment; and

WHEREAS, pursuant to that assignment, Pima County (COUNTY) and SUNE DB35, 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 2 with Exhibit 1 A-1: Expected & Guaranteed Performance Output for Juvenile Court Meter 2 (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).

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 February 21, 2017.

(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:

CONTRACTOR: Solon Development, LLC

Chair, Board of Supervisors



Signature

Date

Brian Seibel, President

Name and Title (Please Print)

1/30/17

Date

ATTEST

Clerk of Board

Date

APPROVED AS TO FORM:



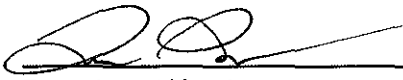
TOBIN ROSEN

Deputy County Attorney

1/27/17

Date

APPROVED AS TO CONTENT



Department Head

1/27/17

Date

Exhibit 1 A-1

Expected & Guaranteed Performance Output for the Juvenile Courts Meter 2

- a. The actual Expected Performance Output (kWh) (Column A) shall not exceed in any given year 1,956,600 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.
- 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 the Juvenile Court Meter 2 was approximately \$.108/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	1,172,632	996,737	\$0.1280	\$150,097	\$127,582	\$0.1080	\$107,648	-\$19,935
2	1,166,769	980,086	\$0.1280	\$149,346	\$125,451	\$0.1112	\$109,025	-\$16,426
3	1,160,935	975,185	\$0.1280	\$148,600	\$124,824	\$0.1146	\$111,734	-\$13,090
4	1,155,130	970,310	\$0.1280	\$147,857	\$124,200	\$0.1180	\$114,511	-\$9,689
5	1,149,355	965,458	\$0.1280	\$147,117	\$123,579	\$0.1216	\$117,356	-\$6,222
6	1,143,608	960,631	\$0.1280	\$146,382	\$122,961	\$0.1252	\$120,273	-\$2,688
7	1,137,890	955,828	\$0.1280	\$145,650	\$122,346	\$0.1290	\$123,261	\$915
8	1,132,201	951,048	\$0.1280	\$144,922	\$121,734	\$0.1328	\$126,324	\$4,590
9	1,126,540	946,293	\$0.1280	\$144,197	\$121,126	\$0.1368	\$129,463	\$8,338
10	1,120,907	941,562	\$0.1280	\$143,476	\$120,520	\$0.1409	\$132,681	\$12,161
11	1,115,302	936,854	\$0.1280	\$142,759	\$119,917	\$0.1451	\$135,978	\$16,060
12	1,109,726	932,170	\$0.1280	\$142,045	\$119,318	\$0.1495	\$139,357	\$20,039
13	1,104,177	927,509	\$0.1280	\$141,335	\$118,721	\$0.1540	\$142,820	\$24,099
14	1,098,656	922,871	\$0.1280	\$140,628	\$118,128	\$0.1586	\$146,369	\$28,241
15	1,093,163	918,257	\$0.1280	\$139,925	\$117,537	\$0.1634	\$150,006	\$32,469
16	1,087,697	913,666	\$0.1280	\$139,225	\$116,949	\$0.1683	\$153,734	\$36,785
17	1,082,259	909,097	\$0.1280	\$138,529	\$116,364	\$0.1733	\$157,554	\$41,190
18	1,076,847	904,552	\$0.1280	\$137,836	\$115,783	\$0.1785	\$161,469	\$45,687
19	1,071,463	900,029	\$0.1280	\$137,147	\$115,204	\$0.1839	\$165,482	\$50,278
20	1,066,106	895,529	\$0.1280	\$136,462	\$114,628	\$0.1894	\$169,594	\$54,966
Total	22,371,363	18,803,671	\$0.1280	\$2,863,534	\$2,406,870	\$0.1451	\$2,714,638	\$307,768

*Reflecting as "constructed" condition.

EXHIBIT 4-1

TERMINATION FEE SCHEDULE

In the event of a termination of this SSA pursuant to 3.1.2, 1 1.4.1, 1 1.4.4 as limited by Section 1 1.5.2, 1 1.4.6 as limited by Section 1 1.5.1, 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	\$2,484,337
2	\$2,361,357
3	\$2,188,415
4	\$2,062,872
5	\$1,954,624
6	\$1,360,858
7	\$1,282,073
8	\$1,216,740
9	\$1,151,406
10	\$1,084,151
11	\$1,016,896
12	\$949,001
13	\$885,589
14	\$821,536
15	\$756,843
16	\$692,151
17	\$626,817
18	\$561,484
19	\$494,869
20	\$428,255

Exhibit "III-1" (to SLA)

Requirements of System, including Equipment

System comprised of the following components:

- Approximately 2250 solar modules
- Approximately 19 kW Inverter
- Associated equipment to assemble the above components into a working system

*Reflecting as "constructed" condition.