County of Los Angeles
INTERNAL SERVICES DEPARTMENT
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JIM JONES
Director

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"To enrich lives through effective and caring service"

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES
19 May 17, 2016

LORI GLASGOW
EXECUTIVE OFFICER

May 17, 2016

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

MUTUAL TERMINATION OF POWER PURCHASE AGREEMENTS UNDER THE SOLAR PANEL PILOT PROJECT (ALL DISTRICTS – 3 VOTES)

SUBJECT

Mutual termination of nine Power Purchase Agreements (PPAs), with SunEdison Origination1, LLC (SunEdison), to provide design and installation of photovoltaic systems at nine County facilities under the Solar Panel Pilot Project (Solar Project).

IT IS RECOMMENDED THAT THE BOARD:

Approve the termination of 9 PPAs with SunEdison, in whole, and delegate authority to the Director of Internal Services, or his designee, to sign the attached Mutual Termination of Power Purchase Agreements (Attachment).

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On July 21, 2015, your Board delegated authority to the Director of Internal Services Department (ISD) to negotiate and execute PPAs with the highest ranked proposer under Phase One of the Solar Project, for eleven County facilities. Prior to executing the PPAs, two sites were eliminated from consideration because they were under long-term leases. On November 4, 2015, ISD utilized its delegated authority to execute PPAs for nine County facilities with SunEdison.

Pursuant to terms in the executed PPAs, prior to beginning the design and installation of the Photovoltaic Systems (PV System), SunEdison was required to provide the County with written

evaluation reports verifying that each of the nine sites would support complete solar installation. Prior to submitting the required evaluation reports, SunEdison found that additional costs would be required to complete the contracted services due to previously unknown conditions. After completing the evaluation reports, SunEdison determined that it would not be able to install and interconnect the PV System at each of the nine sites without material changes that would increase the cost of installation or adversely affect electricity production from the system as designed. Under these conditions, Section 14.0 Conditions Precedent, of the PPAs, allow the parties to terminate the PPAs without any liability to either party. Since neither the design nor installation of the equipment was initiated, SunEdison and the County have agreed that it is in both parties' best interests to mutually terminate the PPAs.

Implementation of Strategic Plan Goals

The recommended action supports County Strategic Plan Goal Number 1 (Operational Effectiveness/Fiscal Sustainability) by mitigating potential financial risk to the County and ensuring the continued viability of solar projects.

FISCAL IMPACT/FINANCING

No fiscal impact.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On July 21, 2015, your Board delegated authority to the Director of ISD to negotiate and execute PPAs after a competitive solicitation was conducted under ISD's Energy Efficiency Project Services Master Agreement (EEPMA). The solicitation was conducted and nine PPAs were negotiated and executed with SunEdison for nine County Facilities.

ISD is recommending that your Board approve the mutual termination of the PPAs with SunEdison pursuant to Sections 14.0, Conditions Precedent, or alternatively 21.2, Termination for Convenience, of the PPAs, as this action would allow for termination without any liability to either party.

SunEdison has duly approved and executed the proposed and attached Mutual Termination of Power Purchase Agreements (Attachment), which has been approved by County Counsel as to form.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Termination of SunEdison's PPAs will not have a negative impact on current services.

CONCLUSION

The Executive Office of the Board of Supervisors is requested to return one stamped copy of the approved Board letter to the Director of ISD.

Respectfully submitted,

JIM JONES
Director

JJ:DC:JS:YY

Enclosures

c: Chief Executive Officer
County Counsel
Auditor-Controller

MUTUAL TERMINATION OF POWER PURCHASE AGREEMENTS

THIS *MUTUAL TERMINATION OF POWER PURCHASE AGREEMENTS* (hereinafter, the "Mutual Termination") is made and entered into as April 12, 2016, by and between

The County of Los Angeles, a political subdivision of the State of California (the "County"), and

Sun Edison Origination 1, LLC, a Delaware Limited Liability Company, with its principal place of business at 600 Clipper Drive, Belmont, California 94002 ("Contractor" or "Sun Edison," and with County, each, a "Party" and together, the "Parties"),

based upon the following recitals:

RECITALS

R1. On February 18, 2015, the County's Internal Service Department ("ISD") released solicitations for power purchase agreements ("PPAs") under the County's Energy Efficiency Project Master Agreement ("EEPMA") in support of the County's proposed Rooftop/Parking Lot Solar Panel Pilot Project (the "Solar Pilot");

R2. On July 21, 2015, the County's Board of Supervisors approved a motion delegating authority to the Director of ISD or his designee to negotiate and execute PPAs with the highest ranking proposer under the Solar Pilot for eleven County facilities;

R3. On September 22, 2015, the County's Board of Supervisors adopted a Resolution with a determination that the requirements of California *Government Code* section 44217.10, *et seq.* were duly met for each of the eleven proposed County facilities in the Solar Pilot;

R4. Effective as of November 4, 2015, the County and Sun Edison entered into separate but identical PPAs for nine of the County facilities as set forth on Exhibit A attached hereto (collectively, the "Sun Edison PPAs"), and eliminated the other two facilities that had been considered;

R5. Sun Edison has not completed its final analysis under Section 14.0 (Condition Precedent) of the Sun Edison PPAs, but at this time has not confirmed any County facilities that would meet its contractual criteria for the Solar Pilot;

R6. The County desires to expand beyond the Solar Pilot and establish a broader portfolio of Countywide solar projects through future solicitations under EEPMA;

R7. The Parties mutually desire to end their engagement under the Solar Pilot.

NOW THEREFORE, the County and Sun Edison further agree as follows:

1.0 DEFINTIONS AND INTERPRETAION

1.1 The County and Sun Edison intend that this Mutual Termination be read together with and as part of the Sun Edison PPAs. To the extent that there is any conflict of, or inconsistency in, interpretation between this Mutual Termination and the other parts of the Sun Edison PPAs, then this Mutual Termination is to be given interpretive priority.

1.2 Unless otherwise specifically defined in this Mutual Termination, terms with the initial letter capitalized have the specific meaning defined in the Sun Edison PPAs, including but not limited to those set forth in Section 4.0 (Definitions).

2.0 MUTUAL TERMINATION

2.1 The County and Sun Edison hereby terminate the Sun Edison PPAs, including but not limited to any License Agreements contained therein.

2.2 This Mutual Termination is effectively immediately without further notice or action by the County or Sun Edison.

2.3 Each Party acknowledges and agrees that it has no right or claim--whether contractual, legal, or equitable--to any compensation, reimbursement, or performance from or by the other Party.

2.4 This Mutual Termination shall not in any way prevent or preclude Sun Edison from participating in future County programs or projects, under EEPMA or otherwise.

3.0 VALIDITY AND ENFORCEABILITY

3.1 If Section 2.0 (Mutual Termination) were held by a Court of competent jurisdiction to be invalid or unenforceable, then Sun Edison hereby declares the PPAs terminated under Section 14.1 (Condition Precedent) of the Sun Edison PPAs.

3.2 If Section 2.0 (Mutual Termination) were held by a Court of competent jurisdiction to be invalid or unenforceable, then the County hereby declares the PPAs terminated under Section 14.2 (Condition Precedent) of the Sun Edison PPAs.

3.3 If Section 2.0 (Mutual Termination) were held by a Court of competent jurisdiction to be invalid or unenforceable, then the County hereby declares the PPAs terminated under Section 21.2 (Termination for Convenience) of the Sun Edison PPAs.

3.4 The Parties, and each of them, hereby waive any required notice, compensation, or further action needed to effectual any unilateral termination under the provisions referenced in this Section 3.0 (Validity and Enforceability).

4.0 SURVIVING PROVISIONS

4.1 Notwithstanding any provision in the Sun Edison PPAs or this Mutual Termination, the County and Sun Edison acknowledge and agree that Sections 26.0 (General Insurance Requirements and 28.0 (Indemnification) shall survive termination of the Sun Edison PPAs (the "Surviving Provisions").

4.2 Without limiting the generality of Section 4.1, above, the Parties acknowledge and agree that the rights and remedies of the Surviving Provisions remain in full force and effect for any disputes, claims, or liabilities arising during or relating back to the term of the Sun Edison PPAs.

5.0 AUTHORIZATION WARRANTY

5.1 The County and Sun Edison each hereby warrant that its designee executing this Mutual Termination on its behalf is an authorized agent who has actual authority to bind the Party to each and every term, condition, and obligation of this Mutual Termination, and that all requirements of the Party have been fulfilled to provide such actual authority.

[END OF TERMS & CONDITIONS – AUTHORIZED SIGNATURE PAGE TO FOLLOW]

MUTUAL TERMINATION OF POWER PURCHASE AGREEMENTS

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AUTHORIZED SIGNATURE PAGE

IN WITNESS WHEREOF, Sun Edison hereby executes this Mutual Termination; and the County of Los Angeles, by motion and order of its Board of Supervisors, has delegated authority and caused this Mutual Termination to be executed on its behalf.

SUN EDISON:

By Tanya Willacy

Tanya Willacy
Assistant Secretary

COUNTY:

By _____

Howard Choy, General Manager
County Office of Sustainability
Internal Services Department

APPROVED AS TO FORM:

Sun Edison Legal Department

By _____
Assistant General Counsel

County Counsel
Mary C. Wickham

By _____
Deputy County Counsel

EXHIBIT A

SUN EDISON PPAS

1. Century Regional Detention Facility (679kW)
2. ISD-C/D Building Automotive Services (1,122kW)
3. Ferguson Admin Services Center (1,120kW
4. Norwalk Library (256kW)
5. ISD Parking Lot Headquarters (1,120kW)
6. Palmdale Sheriff Station (532kW
7. South Los Angeles Sheriff Station (630kW)
8. Walnut Sheriff (404kW)
9. Lost Hills Sheriff Station (346 kW)