



# BOARD AGENDA FACT SHEET

CLERK USE ONLY

BOS ACTION

# \_\_\_\_\_

Planning & Development Services  
Department

August 19, 2025  
Requested Board Date

1. Request:

Board Approval

XX

Information  
Only/Presentation  
Scheduled Hearing  
Time: \_\_\_\_\_

Other (specify)  
\_\_\_\_\_

2:00 p.m.

2. Requested Action: *Type requested action below*

The Imperial County Planning & Development Services Department respectfully requests the Board of Supervisors conduct a public hearing to consider the following actions as recommended by the Planning Commission regarding a Time Extension #24-0004 for amendments to the CED Wistaria Solar Project Development Agreement (DA):

1. Find that the Final EIR (SCH #2013091084) for the Wistaria Ranch Solar Development Agreement (CED Wistaria Solar Project) was certified by the Board of Supervisors on December 30, 2014, and that no further environmental documentation is necessary for this time extension and amendments to the Imperial County Development Agreement concerning CED Wistaria Solar; and,
2. Approve the Resolution and findings for an Amendment to the Imperial County Development Agreement for the CED Wistaria Solar project; and,
3. Adopt the Ordinance for an Amendment to the Imperial County Development Agreement for the CED Wistaria Solar project.

3. Cost \$ 0

Source: N/A

4. If approval of Contract, reviewed/approved by County Counsel on: NO

By: \_\_\_\_\_

Action Request # N/A

*Assigned by County Counsel's Office*

5. If approval of position allocation change, reviewed by Human Resources on: N/A

By: N/A

6. Electronic copy submittal date: August 05, 2025 By: Valerie Grijalva, Office Supervisor II

*Department Head/Agency Representative*

**INSTRUCTIONS:** Back-up must be submitted **15 BUSINESS days** prior to requested date (Please note a Holiday counts as a Business day.) Back-up submitted must contain an **Original and 2 copies**. Copies must be submitted to the County Executive Office double sided and three (3) hole punched. Back-up must be submitted in a PDF format to [vanessasalcido@co.imperial.ca.us](mailto:vanessasalcido@co.imperial.ca.us) and [gracielaalvarez@co.imperial.ca.us](mailto:gracielaalvarez@co.imperial.ca.us)

Reviewed By: \_\_\_\_\_  
Deputy CEO

Reviewed By: \_\_\_\_\_  
Deputy CEO

CEO/CLERK USE ONLY:

DATE STAMP

BOARD DATE: \_\_\_\_\_

Action \_\_\_\_\_

Filing \_\_\_\_\_

Consent \_\_\_\_\_

Presentation \_\_\_\_\_

Hearing \_\_\_\_\_

CEO Approval \_\_\_\_\_

Other (specify) \_\_\_\_\_



# Imperial County Planning & Development Services Planning / Building

Jim Minnick  
DIRECTOR

TO: Board of Supervisors

August 19, 2025

FROM: Jim Minnick, Director of Planning & Development Services

M/O \_\_\_\_\_

**SUBJECT: Time Extension #24-0004 for amendments to the Development Agreement for the CED Wistaria Solar Project**

Dear Board Members:

**REQUESTED ACTION:**

The Imperial County Planning & Development Services Department respectfully requests the Board of Supervisors conduct a public hearing to consider the following actions as recommended by the Planning Commission regarding a Time Extension #24-0004 for amendments to the CED Wistaria Solar Project Development Agreement (DA):

1. Find that the Final EIR (SCH #2013091084) for the Wistaria Ranch Solar Development Agreement (CED Wistaria Solar Project) was certified by the Board of Supervisors on December 30, 2014, and that no further environmental documentation is necessary for this time extension and amendments to the Imperial County Development Agreement concerning CED Wistaria Solar; and,
2. Approve the Resolution and findings for an Amendment to the Imperial County Development Agreement for the CED Wistaria Solar project; and,
3. Adopt the Ordinance for an Amendment to the Imperial County Development Agreement for the CED Wistaria Solar project.

**BACKGROUND:**

The previously entitled Wistaria Solar Ranch was for the construction, operation and reclamation of up to sixteen (16) separate solar energy projects using conventional PV modules (either crystalline or thin-film) or concentrated photovoltaic (CPV) modules. The project could generate 250 MW.

On November 16, 2023, the Planning & Development Services Department received notification from the applicant, CED Wistaria Solar 2, LLC, requesting that the County of Imperial amend the current Development Agreement approved by the Board of Supervisors on December 30, 2014. The applicant requested extending the time to commence development of the project for an additional ten (10) years. The newly proposed amendment will update performance milestones, time limits and allow for the development of the eleven (11) remaining solar projects, i.e. Conditional Use Permit.

**Location:**

The property is south of Interstate 8, east of Pulliam Road, and north of the All-American Canal in southwestern unincorporated Imperial County, generally bound by Wahl Road on the north, Brockman and Rockwood Roads on the west, and the U.S./Mexico border on the south, and Ferrell and Corda Roads on the east.

**SUMMARY:**

The real property which is the subject of this Agreement consists of individual parcels totaling 1,832 acres within Wistaria Ranch Solar Energy Center located on Assessor Parcel Numbers ("APN") 052-180-045, 052-180-034, 052-180-054, 052-180-015, 052-180-012, 052-180-011, 052-170-014, 052-180-002, 052-180-001, 052-440-009, 052-350-021, 052-350-022, 052-440-006, 052-350-020, 052-350-001, 052-350-002, 052-350-003, 052-350-004, 052-440-005, 052-440-003, and 052-440-004.

Staff is available to answer any questions you may have.

Thank you.

Attachment A.	Location Map
Attachment B.	EXT #24-0004 Resolution
Attachment C.	Development Agreement Ordinance
Attachment D.	Development Agreement
Attachment E.	Update and Request for Revision from CEO/ Minute Order# 10c / Recorded Development Agreement dated 08 11 2015
Attachment F.	PC Original Package

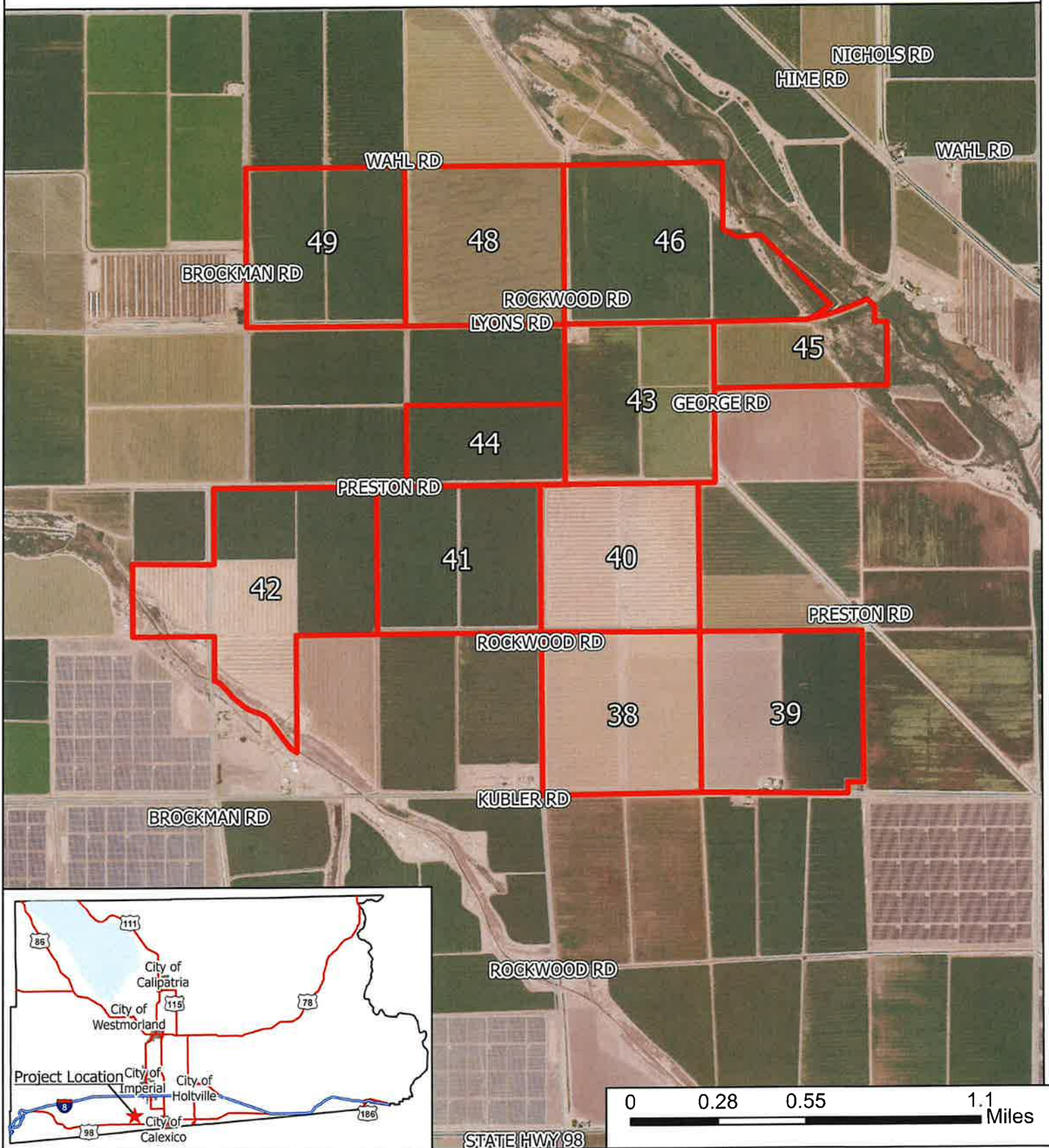
cc: Dr. Kathleen Lang, County Executive Officer  
Eric Havens, County Counsel  
Jim Minnick, Director Planning and Development Services  
Michael Abraham, AICP, ICPDS Assistant Director  
Files: 10.110; 40.103; 40.110; 40.111

DB\VG\s:\allusers\apn\052\180\045\ext24-0004\bos\ext24-0004 wistaria solar da board letter 08 19 2025.docx

**ATTACHMENT “A”  
LOCATION MAP**



# PROJECT LOCATION MAP



**WISTARIA 2 DA  
TIME EXTENSION 24-0004  
APN 052-180-045-000 ET AL.**

Centerline  
Wisteria 2



**ATTACHMENT “B”**  
**EXT#24-0004 RESOLUTION**

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF IMPERIAL, CALIFORNIA FOR THE APPROVAL OF TIME EXTENSION #24-0004 FOR DEVELOPMENT AGREEMENT, AS AMENDMENT CONCERNING THE CED WISTARIA SOLAR PROJECT.**

**WHEREAS**, the Final EIR (SCH #2013091084) for the Wistaria Ranch Development Agreement (CED Wistaria Solar Project) was certified by the Board of Supervisors on December 30, 2014, and that no further environmental documentation is necessary for the time extension and amendment to the Imperial County Development Agreement concerning the CED Wistaria Solar Project; and,

**WHEREAS**, the Board of Supervisors of the County of Imperial has been delegated with the responsibility for approval and certification of proposed amendments; and,

**WHEREAS**, public notice of said request has been given, and the Board of Supervisors has considered evidence presented by the Imperial County Planning & Development Services Department and other interested parties at a public hearing held with respect to this item on August 19, 2025; and,

**NOW THEREFORE**, the Board of Supervisors of the County of Imperial **DOES HEREBY RESOLVE** as follows:

**SECTION 1.** The Board of Supervisors has reviewed the time extension and amendments for the Development Agreement for the CED Wistaria Solar Project prior to making a decision to approve the proposed Development Agreement, as amended. The Board of Supervisors finds and determines that the amended Development Agreement and Time Extension is adequate and prepared in accordance with the requirements of the Imperial County General Plan and Land Use Ordinance and the California Environmental Quality Act (CEQA) which analyzes environmental effects, based upon the following findings and determinations.

**SECTION 2.** That in accordance with Division 23, Chapter 4 of the Imperial County Land Use Ordinance, the following findings for the approval of the Development Agreement for the CED Wistaria Solar Project have been made as follows:

**A. Is the project consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan?**

The design and improvements and amendments proposed are consistent overall with the Imperial County General Plan. The proposed solar development together with the provision for its design and improvements is consistent with the policies, goals, objectives, general land uses, and programs specified in the General Plan. The CED Wistaria Solar Project EIR includes a discussion of the proposed project's consistency with the General Plan under the discussion and analysis of Impact 4.2.1. C, which concludes that the proposed project would not conflict overall with the policies of the County's General Plan. The General Plan designates the subject site as "Agriculture." Sections 90508.02 & 90509.02 of the County Land Use Ordinance identify the permitted and conditional uses within the A-2 & A-3 zoning designations. Uses identified as conditionally permitted require a Conditional Use Permit (CUP), which is subject to the discretionary approval of

the County Board of Supervisors (Board) per a recommendation by the County Planning Commission. The projects include several uses identified as conditionally permitted within the A-2 & A-3 zones.

**B. Is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is or will be located.**

The purpose of the project is for the construction of a PV solar facility. Pursuant to Title 9, Division 5, Chapter 8, "Solar energy electrical generator," "Electrical power generating plant," "Major facilities relating to the generation and transmission of electrical energy," and "Resource extraction and energy development," are uses that are permitted in the A-2, zones subject to approval of a CUP from the County. The Project site is zoned A-2. The purpose of these zones is to designate areas that are suitable for agriculture uses, as well as areas that support other compatible uses consistent with the identified permitting requirements. Solar energy facilities are permitted with a conditional use permit in A-2 zone (Imperial County Code § 90508.02).

**C. Is in conformity with and will promote public convenience, general welfare and good land use practice.**

The proposed project is also consistent with the County's goal of becoming a major source of renewable energy for California and fulfill its mission to help California meet its statutory and regulatory goal of increasing renewable power generation, including greenhouse gas reduction goals of Assembly Bill (AB) 832 (California Global Warming Solutions Act of 2006). Imperial County is a major source of renewable energy for the State of California. One of the purposes of the Imperial Valley Renewable Energy Development Program is to "maximize development of all renewable energy resources." An objective of the Project is "to help California meet its statutory and regulatory goal of increasing renewable power generation, including greenhouse gas reduction goals of Assembly Bill (AB) 832 (California Global Warming Solutions Act of 2006)." Pursuant to SB 2X, California utilities have been mandated to obtain 33% of their energy from renewable sources (wind, solar, geothermal, biofuels, etc.). These renewable energy policies and goals are directly related to statewide population growth.

**D. Will not be detrimental to the health, safety and general welfare;**

The PV solar energy facilities are located in a largely undeveloped and unincorporated portion of south-southwest Imperial County. Land surrounding the solar farm complex site consists of agricultural fields with a checkerboard of private land. The facilities are not located near any large residential area. Noise associated with solar panel operation would also meet the County's noise ordinance requirements at the projects' property lines. The Environmental Impact Report prepared for the Project analyzed the Project's potential effects on the health, safety, and welfare of the public and property and found that, with mitigation, the Project has less than significant effects in all resource areas. The Project also prepared Fiscal, Economic, and Employment Impacts Analyses for the Project and the County finds that the Project will benefit the overall economic



diversity and strength of the County, thus promoting the welfare of the County's citizens. Finally, the Project applicant has agreed to conditions of approval that support and promote the protection of the health, safety, and welfare of the County's citizens and property, and ensures that the County will not be negatively impacted environmentally or fiscally.

**E. Will not adversely affect the orderly development of property or the preservation of property values.**

As outlined above, the Project is both consistent with the relevant provisions of the General Plan and meets or exceeds the minimum requirements governing land use in Imperial County. The Project, despite causing a temporary unavailability of the subject property for agricultural use during construction, operation, maintenance, and decommissioning of the Project, would restore and improve some of the infrastructure on the property including the main access and some of the existing ground water wells, which have, in some cases, become inoperable. Such occupation of and improvements to the property would revive its outward appearance and likely assist in stabilizing if not improving the values of surrounding properties.

**F. Will provide significant public benefits.**

As noted above, the proposed project is consistent with the County's goal of becoming a major source of renewable energy for California and fulfilling its mission to help California meet its statutory and regulatory goal of increasing renewable power generation, including greenhouse gas reduction goals of Assembly Bill (AB) 832 (California Global Warming Solutions Act of 2006). Imperial County is a major source of renewable energy for the State of California. One of the purposes of the Imperial Valley Renewable Energy Development Program is to "maximize development of all renewable energy resources." An objective of the Project is "to help California meet its statutory and regulatory goal of increasing renewable power generation, including greenhouse gas reduction goals of Assembly Bill (AB) 832 (California Global Warming Solutions Act of 2006)." Pursuant to SB 2X, California utilities have been mandated to obtain 33% of their energy from renewable sources (wind, solar, geothermal, biofuels, etc.). These renewable energy policies and goals are directly related to statewide population growth.

**NOW, THEREFORE**, based on the above findings, the Board of Supervisors of the County of Imperial **DOES HEREBY APPROVE** Time Extension #24-0004 for the CED Wistaria Solar Project Development Agreement, as amended.

**PASSED, ADOPTED AND APPROVED** by the Board of Supervisors of the County of Imperial this 19<sup>th</sup> day of August 2025.

---

John Hawk,  
Chairman of the Board

I hereby certify that the preceding resolution was taken by the Board of Supervisors at a meeting conducted on August 19, 2025, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**ATTEST:**

---

Cynthia Medina,  
Clerk of the Board of Supervisors

s\052\180\045\ext 24 0004\bs\ordinance

**ATTACHMENT “C”**  
**DEVELOPMENT AGREEMENT ORDINANCE**

**ORDINANCE NO.**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS**

**OF THE COUNTY OF IMPERIAL**

**AMENDING Title 9, Division 23, Chapter 2 of the Imperial County Code regarding Development Agreements for non-residential projects to add Sections 92310.16 -92310.19 APPROVING Imperial County Development Agreement Concerning CED WISTARIA SOLAR DEVELOPMENT AND MAKING CERTAIN FINDINGS RELATED THERETO**

**SECTION 1. The Board of Supervisors of the County of Imperial finds and ordains as follows:**

- A. The applicant, CED Wistaria Solar 2, LLC is filed an application with the County for a Development Agreement pursuant to the provisions of state law and of the Imperial County Code California Government Code Sections 65864 through 65869.5 and Title 9, Division 23 of the County of Imperial Codified Ordinances (County Code Sections 92301 – 92309) which authorize the County to enter into binding development agreements with persons having legal or equitable interests in real property for the development of the property in order to establish certainty in the development process; and
- B. Applicant has provided evidence of the requisite legal or equitable interest in the real property on which the Project will be constructed, as well as the consent of the landowners of such property; and
- C. On March 12, 2025, the Planning Commission conducted its duly noticed public hearing regarding the Development Agreement pursuant to Imperial County Code Section 92304 and provided its written recommendation which is set out in the record of this hearing; and
- D. The Board of Supervisors on August 19, 2025, conducted its duly noticed public hearing on the Amended Development Agreement requesting a time extension; and
- E. At that hearing, the Board of Supervisors received evidence and heard and considered all testimony, pros and cons, regarding the Development Agreement pursuant to County Code Section 92304.01; and
- F. The Board of Supervisors has certified the Final EIR for the Project, which included the EIR and includes the Development Agreement review within the project description; and
- G. There are no applicable specific plans; and

- H. This Agreement constitutes a current exercise of the County's police powers to provide certainty to Developer in the development approval process by vesting the permitted uses, density, intensity of use, and the timing and phasing of development in exchange for Developer's commitment to provide significant public benefits to the County.
- I. This Agreement is consistent with the provisions of the County's Development Agreement Ordinance.
- J. For purposes of the 30-year term, the Board of Supervisors specifically finds and ordains that such extension of the normal, shorter term of a Development Agreement is necessary to carry out the purposes and benefits of this Agreement, based upon the phasing of the 11 remaining proposed CUP's, and is in no way intended to extend the term of any temporary CUP.
- K. Based upon such evidence, the Board finds and ordains that the Development Agreement is consistent with the Imperial County General Plan, and that such decision is final.

**SECTION 2.** Division 23, Chapter 2 of the Imperial County Code, is amended to add Sections 92310.16 through 92310.19 to read as follows:

Section

92310.16	Generally
92310.17	Wistaria Ranch Solar, LLC – Findings
92310.18	Approval
92310.19	Statute of Limitations

**92310.12 Generally.**

A development agreement is a legislative act which shall be approved by ordinance. All approved development agreements shall be codified by amendment of this chapter.

**92310.13 Wistaria Ranch Solar, LLC - Findings.**

The Board finds and ordains that the development agreement by and between the County of Imperial and Wistaria Ranch Solar, LLC relating to the development of the Wistaria Ranch Solar Energy Center (the "development agreement"), a copy of which is attached to the ordinance codified in this section as Exhibit 1, and incorporated into this chapter for all purposes by this reference, has been recommended by the County planning director as being consistent with the County's general plan and the provisions of Division 23 of Title 9 of the Codified Ordinances of the County,



has been reviewed by the Planning Commission and that the development agreement:

- A. Is consistent with the objectives, policies, general land uses and programs specified in the general plan; and,
- B. Is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is or will be located with the adoption of the variances; and,
- C. Is in conformity with and will promote public convenience, general welfare and good land use practice; and,
- D. Will not be detrimental to the health, safety and general welfare; and,
- E. Will not adversely affect the orderly development of property or the preservation of property values; and,
- F. Will provide significant public benefits because it provides renewable solar energy as mandated by state and federal law and economic benefits as set out in the EIA/JIA/FIA Report.

The Board specifically finds and ordains that the provisions of the development agreement are consistent with the County's general plan. The Board further finds and ordains that the underlying development subject to full and proper environmental review under CEQA, resulting in the certification of an EIR on December 30, 2014, which review encompassed the development agreement. Findings regarding same are contained in Board of Supervisors Resolution 2014-152 and the adoption of the ordinance codified in this chapter is based on those findings.

#### **92310.14 Wistaria Ranch Solar LLC — Approval.**

Pursuant to the authorization provided in Section 65864 et seq. of the Government Code of the State of California and the County of Imperial Codified Ordinances, the Board approves the development agreement. The Board authorizes the chairperson of the board to execute the developer's agreement on behalf of the county.

#### **92310.15 Wistaria Ranch Solar, LLC — Statute of limitations.**

No action or proceeding ("action") may be brought by a person, public agency, or public or private corporation partnership, association, organization or other business or nonbusiness entity other than the parties to the development agreement or their successors, to attack, review, interpret, set aside, void, or annul all or any part of the development agreement or the decision of the County of Imperial to approve and execute the development agreement, unless the action is commenced and service made on the County of Imperial within one hundred twenty (120) days from the County's adoption of the ordinance codified in this section.

**SECTION 3:** This Ordinance shall take effect thirty (30) days after the date of its adoption and prior to the expiration of fifteen (15) days from the passage thereof, shall be published at least once in a newspaper of general circulation printed and published in the County of Imperial, State of California, together with the names of the Board of Supervisors voting for and against the same.

**PASSED, ADOPTED AND APPROVED** by the Board of Supervisors of the County of Imperial this 19th day of August 2025.

ATTEST:

---

Cynthia Medina,  
Clerk of the Board

---

John Hawk,  
Chairman of the Board

**ATTACHMENT “D”**  
**DEVELOPMENT AGREEMENT**

Recording requested by, and  
when recorded return to:

County of Imperial  
County Executive Office  
940 W. Main Street, Suite  
208 El Centro, CA 92243

---

**Imperial County Development Agreement  
Concerning Wistaria Ranch Solar Energy Center**

**THIS DEVELOPMENT AGREEMENT** (“Agreement”) is entered into by and between the **County of Imperial**, a political subdivision of the State of California, (“County”) and **CED Wistaria Solar 2, LLC**, a Delaware limited liability company licensed to do business in the state of California (“Developer”) (individually, “Party;” collectively, “Parties”) with respect to the development of real property in the County, known as the Wistaria Ranch Solar Energy Center (“Wistaria Project”). To date, full buildout of the Wistaria Project has not need been completed.

1. **AUTHORIZATION.** California Government Code Sections 65864 through 65869.5 and Title 9, Division 23 of the County of Imperial Codified Ordinances (Sections 92301 – 92309) authorize the County to enter into binding development agreements with persons having legal or equitable interests in real property for the development of the property in order to establish certainty in the development process.
2. **PROPERTY AND PROJECT DESCRIPTION.**
  - 2.1. **Property Description.** The real property which is the subject of this Agreement consists of individual parcels totaling 1,832 acres within Wistaria Ranch Solar Energy Center located on Assessor Parcel Numbers (“APN”) 052-180-045, 052-180-034, 052-180-054, 052-180-015, 052-180-012, 052-180-011, 052-170-014, 052-180-002, 052-180-001, 052-440-009, 052-350-021, 052-350-022, 052-440-006, 052-350-020, 052-350-001, 052-350-002, 052-350-003, 052-350-004, 052-440-005, 052-440-003, and 052-440-004 as more particularly described in **Exhibit “A”** attached hereto (the “Property”). The Property is south of Interstate 8, east of Pulliam Road, and north of the All American Canal in southwestern unincorporated Imperial County, generally bound by Wahl Road on the north, Brockman and Rockwood Roads on the west, and the U.S./Mexico border on the south, and Ferrell and Corda Roads on the east.
  - 2.2. **Project Description.** The development that is the subject of this Agreement includes portions of the Wistaria Project as described in the Final Environmental Impact Report (“FEIR”) (SCH 2013091084) certified by the Board of Supervisors on December 30, 2014 and authorized in the related approved entitlements. While the Project included the buildout of sixteen (16) separate conditional use permits (“CUPs”), this Agreement applies to eleven (11) previously approved CUPs and variances and related improvements as more fully described in Section 5 of this Agreement (“Project”). The geographical area within the boundaries of each CUP

may be referred to herein as the “CUP Area.”

3. **LEGAL OR EQUITABLE INTEREST IN PROPERTY.** Developer is the holder of options to lease or purchase the Property from the legal owners and has the consent of the legal owners to enter into this Agreement.

4. **APPROVALS.**

4.1. This Agreement was approved by Ordinance No. \_\_\_\_\_ (“DA Ordinance”), adopted on \_\_\_\_\_, 2025, and shall be effective on the date the DA Ordinance becomes effective (“Effective Date”).

4.2. As of the Effective Date, this Agreement has been given all required discretionary approvals from the following County entities:

4.2.1. Planning Commission; and

4.2.2. Board of Supervisors.

4.3. County and Developer agree that the Planning Commission and Board of Supervisors provided their recommendations and discretionary approvals, as applicable (Planning Commission recommendation and Board of Supervisors approval) for the Project and received all public testimony thereon at public hearings properly noticed as provided in Government Code Sections 65867, 65090, and 65091, and County of Imperial Codified Ordinances Section 92303, in addition to any other notice required by law for other actions considered concurrently with the Agreement.

4.4. County and Developer agree that all environmental impacts associated with the development of the Project as provided under this Agreement have been analyzed and adequately addressed in the FEIR and Addendum (as defined below) in accordance with the California Environmental Quality Act (Pub. Res. Code §§ 21000 *et seq.*) (“CEQA”), and that the adoption of this Agreement will not result in any new or different significant environmental effect, or substantial increase in severity of a previously identified significant environmental impact considered in the certified FEIR.

5. **ENTITLEMENTS; STATUTORY REQUIREMENTS FOR DEVELOPMENT AGREEMENT; PERMITTED USES; DENSITY/INTENSITY OF USE; HEIGHT AND SIZE; DEDICATION OF PUBLIC LANDS.**

5.1. **Entitlements.** The County’s Board of Supervisors has approved the following land use entitlements for the Property, which entitlements and their implementation are the subject of this Agreement:

5.1.1. Wistaria Ranch Solar Energy Center Conditional Use Permits 13-0038 through 13-0046, 13-0048 and 13-0049.

5.1.2. Wistaria Ranch Solar Energy Center Variances 13-0004 through 13-0012, 13-0014 and 13-0015 (“Variances”).



**5.1.3.** Wistaria Ranch Solar Energy Center FEIR.

**5.1.4.** Wistaria Ranch Solar Energy Center CEQA Findings and Mitigation Monitoring and Reporting Program (“MMRP”).

**5.1.5.** Wistaria Ranch Solar Energy Center Addendum.

For the avoidance of doubt, as of the Effective Date, the Development Agreement related to the Wistaria Project approved by the Board of Supervisors and recorded on August 11, 2015 shall be of no force and effect as it relates to the Project.

**5.2. Permitted Uses.** The permitted uses of the Property are those uses authorized and described in the CUPs and Variances, those uses described in the FEIR and Addendum, and those uses allowed by right within the existing zone.

**5.3. Density/Intensity of Use.** The permitted density and intensity of use shall not exceed the density and intensity of the uses authorized and described in the CUPs and Variances, those uses described in the FEIR and Addendum, or those uses allowed by right within the existing zone.

**5.4. Height and Size.** The permitted height and size of proposed structures shall be the limits allowed by the existing zone except for structures qualified to exceed the high limit described in the Variances.

**5.5. Dedication/Reservation Public Lands.** The provisions for reservation or dedication of lands for public purposes are those described in the FEIR and Addendum for open space or habitat protection.

**6. DURATION OF AGREEMENT AND ENTITLEMENTS; PHASING; EARLY TERMINATION OF CUPS.**

**6.1.** The term of this Agreement shall commence on the Effective Date as defined in Paragraph 4.1 and shall extend for a period of ten (10) years following the Effective Date. The entitlements enumerated in Paragraph 5.1 are hereby extended for a period of ten (10) years following the Effective Date. This Agreement may be extended by mutual agreement of the Parties, or by authorization of the Planning Director, as set forth in the County of Imperial Codified Ordinances. Should the Project be subject to litigation the Term of this Agreement shall be tolled and extended accordingly.

**6.1.1.** Any CUP on which Commencement of Construction (as defined below) has not commenced by the tenth (10th) anniversary of the Effective Date of this Agreement shall be of no further force and effect, unless otherwise extended.

**6.1.2.** As used here, “Commence Construction” or “Commencement of Construction” means the earlier of the date on which Developer obtains a grading permit or building permit, as may be applicable, in reliance on a CUP.

- 6.2. The term of this Agreement may terminate sooner as provided herein.
- 6.3. This Agreement shall run with the land in each CUP Area for the term of this Agreement and shall bind each and every owner of such land.
- 6.4. The Project may be constructed in phases with each CUP Area serving as an individual phase. No phase shall be smaller than a single CUP. The Project may also be constructed in groups of CUP Areas.
- 6.5. Notwithstanding any other provision to the Agreement or the entitlements, in no event shall any entitlement exceed forty (40) years from the Effective Date of this Agreement. Such termination of the entitlements is consensual and shall not be subject to a public hearing. The CUPs may be extended for an additional ten -year period by the appropriate County entity (either the Planning Director, the Planning Commission or the Board of Supervisors as set forth in the applicable County of Imperial Codified Ordinances) upon a finding that the Project is in compliance with all conditions of the CUPs as stated herein and any applicable land use regulation of the County of Imperial. If an extension is necessary, Developer shall file a written extension request with the Planning Director at least sixty (60) days prior to the expiration date of the permit. Such an extension request shall include the appropriate extension fee.

**7. RULES, REGULATIONS, AND POLICIES.**

- 7.1. County acknowledges that Developer would not enter into this Agreement or agree to provide the public benefits and improvements described in this Agreement if it were not for the commitment of the County that the Property can be developed, in accordance with County's ordinances, rules, regulations, and policies, including but not limited to those governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications applicable to the development of the Property existing as of the Effective Date of this Agreement.
- 7.2. The Property shall not be subject to any subsequently enacted amendment, modification of, or substitution for, the General Plan, zoning, or subdivision ordinances without the mutual written consent of the County and Developer, except as otherwise provided here.
- 7.3. Except as otherwise provided in this Agreement, Developer shall have the right, to the fullest extent permitted under California Government Code Sections 65864 *et seq.* and provisions of the County of Imperial Codified Ordinances to: (1) develop the Property in accordance with this Agreement, rules, regulations, ordinances, policies, conditions, environmental regulations, exactions, entitlements, assessments, payments, and fees applicable to and governing development of the Property in effect as of the Effective Date of this Agreement; and (2) develop the Property with respect to the permitted use(s) of land, density, and intensity of use(s), and timing and phasing of development as generally described in this Agreement and in the entitlements set forth in Section 5 of this Agreement in effect as of the Effective Date of this Agreement, provided that:

- 7.3.1. Developer acknowledges that the Project must comply with all future amendments, modifications, or alterations of County's building, plumbing, mechanical, electrical, signage, and fire codes.
- 7.3.2. If a conflict between this Agreement and federal or State laws or regulations arises that prevents or precludes compliance with one or more provisions of this Agreement, such provisions of the Agreement shall, without further action by either Party, be deemed suspended as may be necessary to allow continuous compliance with such State or federal laws or regulations, and such suspension shall mean that non-compliance with such suspended provisions shall not be a breach of this Agreement from and after the date on which such conflict arose. County and Developer shall meet and confer in good faith in a reasonable attempt to modify the suspended terms of this Agreement to the extent feasible so that such terms, as modified, can be met without conflicting with federal or State laws or regulations.
- 7.3.3. Nothing in this Agreement shall be construed to be in derogation of County's police power to protect the public health and safety in the event of a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services involving the Property or the community.
- 7.3.4. Developer acknowledges that the Project must comply with any new or amended ordinance, resolution, rule, regulation, or policy that does not conflict with, or derogate from, (i) the entitlements set forth and described in this Agreement, (ii) the entitlements to which Developer is otherwise entitled by law, or (iii) those ordinances, resolutions, rules, regulations, and policies in effect at the Effective Date, . A conflict is one that would significantly limit the authorized use and disturbance area within the CUPs. Developer further acknowledges that this Agreement does not prevent the County from denying or conditionally approving any subsequent discretionary development project application on the basis of such existing or new rules or regulations.
- 7.3.5. This Agreement shall not be construed to limit the authority or obligation of County to hold necessary public hearings, or to limit the discretion of County or any of its officers or officials with regard to rules, regulations, ordinances, laws, and entitlements of use that require the exercise of discretion by County, or any of its officers or officials, provided that subsequent discretionary actions: (1) shall not prevent or delay development of the Property for the uses and to the density and intensity of development as provided by this Agreement and the other entitlements in effect as of the Effective Date of this Agreement; and (2) shall not be inconsistent with the entitlements.

8. **INFRASTRUCTURE CAPACITY**. Subject to conditions of approval requiring specific upgrades, County hereby acknowledges that it has been informed that the Project will have

sufficient capacity in its services, and utility systems, including without limitation, traffic circulation, flood control, water supply treatment, distribution, and service, to accommodate the Project.

**8.1.** Prior to the issuance of final Certificate of Occupancy, Developer owner shall be responsible for repairing of any roads and bridges it will utilize via improvements as determined by the County Road Commissioner based on the final and approved access points in the Project's grading and improvements plans.

**9. PUBLIC BENEFITS PROVIDED BY DEVELOPER.** County acknowledges that Developer's performance under this Agreement provides significant public benefits to County, including, but not limited to:

**9.1. FEIR Mitigation Measures and Conditions of Approval.** Notwithstanding any other provision in this Agreement to the contrary, if Developer elects to develop the Project on the Property, Developer shall be bound by, and shall perform, all CUP provisions, conditions of approval and mitigation measures for which Developer is responsible as contained in the Project entitlements and certified FEIR and approved Addendum, as well as those provided in this Agreement, and failure to do so without prior County authorization shall be a default under this Agreement as well as CUPs. In the event of a conflict among the terms of Agreement, CUPs, FEIR, Addendum, MMRP, the hierarchy of documents that shall control the Parties' rights and obligations are the FEIR, Addendum the Agreement, MMRP, then CUPs.

**9.2 Public Service Benefit.** Developer shall make Public Service Benefit payments to County, which will be used to provide for a concerted and coordinated effort to maximize the benefits of the solar project to the County and its residents (the "Public Service Payment"). Such benefits might include, but are not limited to, infrastructure improvement, job creation, community services, economic development and enhancement to the quality of life in neighboring communities. Developer shall pay the Public Service Payment as follows:

**9.2.1. Annual Payment Structure.** Developer shall make annual Service Benefit payments pursuant to the Public Benefit Program Guidelines (attached hereto as **Exhibit "B"**), the payment structure shall be as follows:

- a) Each year, beginning on the Public Service Payment Date (as defined below), as specified within the site-Specific Conditions within the CUPs, Developer shall pay to County an amount equal to six hundred dollars (\$600) per acre of farmland of the Project. The Developer shall pay to County an amount equal to four hundred fifty dollars (\$450) per acre of non-farmland of the Project ("Service Benefits Payment"). Payment for farmland and non-farmland shall be increased annually to reflect a Consumer Price Index – Los Angeles SMSA – all urban consumers ("CPI") of 2.5 percent.

- b) In any event, Developer shall be responsible for annual Service Benefit Payments for each and every year the project remains in operation, which shall not exceed a 30-year period or until such time as the Project is decommissioned and the Project site is returned to its original condition, as required by the CUPs.

**9.2.2. Due Date.** The first Service Benefit Payment is due and shall be paid to the County Executive Office prior to the issuance of the first grading permit or building permit (whichever is issued first) for energy producing facilities on the Site (the “Service Benefit Payment Date”) and every twelve (12) months thereafter until the expiration of the term of this Agreement in accordance herewith.

**9.2.3. Late Payments.** If Developer receives a bill from County, payment to County shall be due within thirty (30) days of Developer’s receipt thereof. Payments received by County after the thirtieth (30<sup>th</sup>) day following Developer’s receipt of a bill shall be deemed late. Developer hereby agrees to pay interest at the rate of six percent (6%) per annum of the payment due on the amount of any payment received by County beyond the due date. Said interest shall be included with the late payment. The obligation to pay interest shall be stayed when such amounts are disputed in good faith, so long as Developer submits the payments “under written protest.” Upon determination of dispute, such interest may be assessed if it is determined that the dispute was not made in good faith.

**9.2.4. Application of Subsequently Enacted Rules, Regulations, and Official Policies.**

- a) County may adopt new or modified rules, regulations, and official policies after the Effective Date of this Agreement (“New Rules”); provided, however, such New Rules shall be applicable to the Project only to the extent that such application will not result in the payment of amounts above the Public Service Benefit amounts due and payable to the County pursuant to this Agreement.
- b) Notwithstanding the foregoing, County shall not be precluded from applying any New Rules to the Project where the New Rules are:
  - 1. Specifically mandated by changes in state or federal laws or state or federal regulations adopted after the Effective Date;
  - 2. Specifically mandated by a court of competent jurisdiction;
  - 3. Changes to the Uniform Building Code or similar uniform construction codes, or to County’s local construction Ordinances for public improvements so long as such code or Ordinance has been adopted by County and is in effect



on a County-wide basis and is not applied retroactively (in the event of a conflict between this Section and Section II.B.2.a, Section II.B.2.a shall prevail.);

4. Required as a result of facts, events or circumstances presently unknown or unforeseeable that would otherwise have an immediate adverse risk on the health or safety of the surrounding community; or
5. New or increased regulatory processing fees so long as such fees are not applied retroactively and are applied to all development projects on a countywide basis. (In the event of a conflict between this Section and Section II.B.2.a, Section II.B.2.a shall prevail.)

**9.2.5. California State Property Tax Exemption.** If the property taxes for the Project exceed the base year assessment determined after the completion of the Project, plus two percent (2%) annual increase, then ten percent (10%) of that increase in property taxes is credited to the Service Benefit payment due that year. The Parties agree that the Project shall have a guaranteed assessed valuation of \$57,529,690, and the depreciation rate for property tax purposes shall be based on the County of Imperial Commercial Year (C-30) depreciation schedule. The applicable Depreciation Table is attached hereto as **Exhibit “C”**. The Parties agree that any Property requiring assessment shall be assessed utilizing an income approach. The Parties further agree that all assessed Property values shall increase by a fixed rate of 2% per annum, including but not limited to non-solar improvements and battery storage, irrespective of the Consumer Price Index or any other factor, to ensure that County and other regional taxing authorities receive the scheduled revenue. This Agreement shall be in full compliance with Proposition 13 in all other aspects. Developer and Property owner(s) agree not to appeal the Property’s assessed value to the County Board of Equalization / Assessment Appeals Board for the duration of the Project operation, or thirty (30) years, whichever comes first. This is necessary to mitigate the fiscal costs to County to host this facility and Project.

**9.2.6. Periodic Compliance Review.** County shall review Developer’s good faith compliance with the terms of this Agreement on an annual basis. Developer shall submit evidence of good faith compliance with this agreement on an annual basis.

### **9.3. Sales Tax Benefit.**

**9.3.1.** Developer will require that all qualifying contractors and subcontractors exercise their option to obtain a California Department of Tax and Fee Administration (“CDTFA”) sub-permit for the jobsite and allocate all eligible use tax payments to Imperial County and Imperial County Local Transportation Authority (“LTA”).

- 9.3.2.** Prior to commencement of any construction activity at the Property, Developer shall require that the contractor or subcontractor provide County with a copy of their CDTFA account number and sub-permit. Developer shall either cause its construction contractor to treat the Project in accordance with California Sales and Use Tax Regulation 1521(b)(2)(B), California Sales and Use Tax Regulation 1521(c)(13)(B), and California Sales and Use Tax Regulation 1826(b) for sales and use tax purposes, or form a “Buying Company” as defined in the California Sales and Use Tax Regulation 1699(h). Developer may adopt an alternate methodology to accomplish this goal if such methodology is approved by the County’s Executive Officer, which approval shall not be unreasonably withheld or delayed, prior to issuance of any building permit.
- 9.3.3.** No later than forty-five (45) days after the due date for filing sales and use tax returns for each calendar quarter, occurring after the commencement of any construction activity on-site through and including the first anniversary of commercial operation date (“COD”), Developer shall report to County, the total amount of sales and use taxes related to the Project that are allocated to the County, and reported on Developer’s, general contractor’s and subcontractors’ applicable California sales and use tax returns.
- 9.3.4.** Guarantee Amounts. Prior to the issuance of any building permit for the Project, Developer shall provide County with a guarantee of the minimum sales and use taxes (based on a total output capacity of one hundred megawatts [“100 MW”] alternating current solar generation facility with an integrated fifty [“50 MW”] megawatt battery storage system for the Project) that will be received by County and LTA under existing applicable sales and use tax laws. Developer warrants that the sales/use tax guarantee amounts to be provided to County as mandated in this paragraph shall be true and accurate estimates of the projected sales and use taxes that will be generated for this Project. Developer shall provide County with evidence of the projected sales/use taxes for the Project, including but not limited to sales tax receipts, and executed or anticipated engineering contracts, procurement contracts, and construction contracts. If the Parties are unable to agree upon a guarantee amount, then the dispute shall be referred to an independent accountant mutually acceptable to both Parties. The costs for such nonbinding mediation shall be borne by Developer. Developer warrants that the sales/use tax guarantee amounts to be provided to County as mandated in this paragraph will incorporate any and all sales/use tax exemptions that Developer and/or its contractors and subcontractors intend to utilize, and that such exemptions will be disclosed to County fully and in good faith prior to the issuance of any building permit for this Project. Developer understands and acknowledges that the sales/use tax guarantee amounts to be provided to County as mandated by this paragraph are a part of the consideration to be received by County in return for entering into this Agreement, and further understands and acknowledges that County would not enter into this Agreement but for said guarantee from Developer. In the event that County and / or LTA receives less than the amount of sales / use taxes guaranteed pursuant to this

paragraph, then Developer shall pay, as and when provided below, to County or LTA as applicable, the amount of the applicable shortfall.

**9.3.5. Adjustments to Guarantee Amounts.**

- (a) The amount of sales and use tax anticipated to be generated is based on the projected construction of a 100 MW AC solar generation facility with an integrated 50 MW battery storage system. Construction of any additional output capacity beyond the 100 MW output or storage capacity now projected will require the sales / use tax guarantee amounts to be adjusted based on the actual output from solar generation facilities of the Project as evidenced by any power purchase agreement subsequently entered into by Developer related to this Project.
- (b) To the extent of any reduction in the size of the Project as the result of any final ruling, stipulated judgment, or settlement, the sales / use tax guarantee amounts mandated under paragraph D shall be reduced pro rata based on the size of such reduction. To the extent of any reduction in the size of the Project as the result of any final ruling, stipulated judgment, or settlement, in accordance with Section V.C below, the not-to-exceed amounts set forth in Section III.B shall be reduced pro rata based on the size of such reduction.

**9.3.6.** The complete amount due to County for the Project must be received within one (1) year after COD for this Project. If, within one (1) year after issuance of the final Certificate of Occupancy, the sales and use taxes received by the County are less than the amount guaranteed for that portion of the project, Developer shall pay the difference to the County.

**9.3.7.** Payments to County and LTA as a result of a shortfall shall be due within thirty days of Developer's receipt of written notice of shortfall from the County. Payments received by County after the ninetieth (90<sup>th</sup>) day following Developer's receipt of notice shall be deemed late. Developer hereby agrees to pay interest at the rate of six percent (6%) per annum of the payment due for any payment received by County beyond the due date. Said interest shall be included with the late payment. The obligation to pay interest shall be stayed when such amounts are disputed in good faith, so long as Developer submits the payments "under written protest." Upon determination of dispute, such interest may be assessed if it is determined that the dispute was not made in good faith.

**9.3.8.** In the event that Developer repowers or replaces the equipment onsite, each CUP Area shall be designated as the "Point of Sale" so as to create an additional local tax-funding source for the County.

**9.3.9.** Developer shall provide an approved water supply capable of supplying the required fire flow to the Project as determined by Appendix B of the 2019 California Fire Code. Developer shall be responsible for all costs

associated with the provision of the water supply, including but not limited to installation and maintenance. Developer shall also install and maintain private fire service mains and appurtenance in accordance with National Fire Protection Association (“NFPA”) section 24. Project will provide adequate fire water. The County Fire Department will determine number of gallons to be placed strategically once a site plan is reviewed.

**9.3.10.** An approved automatic fire suppression system shall be installed on all required structures as per the adopted California Fire Code at time of building permit issuance. All fire suppression systems will be installed and maintained to the current adapted fire code and regulations.

**9.3.11.** An approved automatic fire detection system shall be installed on all required structures as per the California Fire Code. All fire detection systems will be installed and maintained to the current adapted fire code and regulations.

**9.3.12.** Developer must develop an Emergency Operation Plan in conjunction with local fire service personnel and the authority having jurisdiction (“AHJ”) and hold a comprehensive understanding of the hazards associated with solar power plant technology and must incorporate adequate explosion prevention protection as required in NFPA 855 and International Fire Code Chapter 12.

**9.3.13.** Project access roads and gates will be installed and maintained in accordance with the current adapted fire code. Developer shall maintain a Knox Box for access to the Project site. Developer will install signage that identifies the contents of an energy storage systems (“ESS”) as required on all ESS installations to alert first responders to the potential hazards associated with the installation.

**9.3.14.** Developer shall provide product containment areas(s) for both product and water run-off. All product and water runoff shall be retained for removal in accordance with applicable law.

**9.3.15.** All hazardous materials shall be handled, stored, and disposed of in accordance with an approved Hazardous Waste Materials Plan (“HWMP”). All spills shall be documented and reported to County Fire/OES and the County Certified Unified Program Agency as required by applicable law. The Hazardous Waste Material Plan shall be submitted to Certified Unified Program Agency (“CUPA”) for their review and approval.

**9.3.16.** Any Fire Mitigation Payments set out in the CUP are separate from the payments required under this section.

**9.4. Nonrefundable Contribution.** In addition to the terms and conditions of approved CUPs, the Developer shall pay on or before the issuance of the 1st Building Permit a nonrefundable contribution of one million one hundred thousand Dollars (\$1,100,000) (“Nonrefundable Contribution Amount”) to go

towards County projects in County's sole discretion. This Nonrefundable Contribution Amount may be used for other public projects and purposes in County's sole discretion.

- 9.5. Severability. In any event that a fee, payment or obligation required under this Section 9 is determined to be invalid, illegal, rescinded or otherwise of no force and effect by federal, state or local government or a court of competent jurisdiction, Developer shall not be required to comply with such obligation immediately upon date of such invalidity. The Parties acknowledge and agree that Developer's noncompliance will not result in a breach of this Agreement.
10. **VALUE OF PAYMENTS.** In addition to other provisions of this Agreement, all payments in this Agreement shall escalate annually beginning on January 1, 2025, based upon the CPI, but in no case shall the CPI be less than zero (0).
11. **EMINENT DOMAIN.** The Parties to this Agreement understand and acknowledge that County has no present or foreseeable future need to acquire public access to the Project not already authorized under the CUP and/or County-issued entitlements for this Project. However, should a future need arise in which County requires additional public access to the Project, County shall, before engaging in any eminent domain proceedings, meet and negotiate in good faith with Developer concerning the proposed public access to the Project.
12. **PERIODIC REVIEW.**
- 12.1. County shall review the extent of good faith compliance by Developer with the terms of this Agreement at least every twelve (12) months pursuant to California Government Code section 65865.1.
- 12.2. Upon written request from the County, Developer shall have the duty to demonstrate its good faith compliance with the terms of this Agreement.
- 12.3. Any County failure to annually review Developer's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by County or Developer to be a breach or default of the Agreement, and shall not be used as grounds to amend, modify, alter, or terminate the Agreement.
13. **ASSIGNMENT AND DELEGATION.** As set out here, Developer may sell, transfer, or assign (collectively, "assign") all or part of Developer's rights, title and interest in the Project. This Agreement shall be binding on all successors in interest of the Developer pursuant to County of Imperial Codified Ordinances Code Section 92325.
- 13.1. **Partial Assignment.** When one or more CUP is assigned, but the assignment is of less than the entire Project area, the assignment is referred to herein as a "partial assignment." The assignment, including but not limited to any partial assignment, shall expressly include the assignment and assumption of all rights, duties, and obligations arising under or from this Agreement, other County-issued entitlements and the MMRP applicable to the CUP. There shall be no assignment of less than the entire CUP Area, and any such attempted assignment is void.



- 13.2.** Developer shall not, without prior notification to the Imperial County Planning and Development Services Department, assign, sell, transfer, or grant control of the Project, or any right or privilege therein granted by a CUP. Developer shall provide a minimum of forty-five (45) days written notice prior to any proposed transfer becoming effective. An approved assignment agreement shall be in place for the new Project owner to build and maintain as agreed to by the conditions set forth in this Agreement. The County Assessor's Office shall be notified of any ownership change.
- 13.3.** Within fifteen (15) calendar days after an assignment:
- (1) Developer shall notify the County, in writing, of such assignment and shall provide County with both:
- (a) an executed copy of the assignment evidencing that the assignee expressly assumes all the assigned duties and obligations of Developer under this Agreement, other County-issued entitlements, and the MMRP applicable to the CUP area; and
  - (b) Developer's requested form of release of such duties and obligations related to that CUP area;
- (2) Assignee shall provide County with the assignee's financial security equal in value to the financial security required of Developer by the Project entitlements including any and all entitlement-required increases to secure performance of its obligations with respect to the portion of the Project assigned, including but not limited to that for the decommissioning and reclamation plan; and
- (3) Developer and/or assignee shall provide any and all additional information necessary to determine the sufficiency of such replacement financial security. As used here "financial security" may mean one or more security instruments which can include letters of credit, performance bonds, or other forms of security consistent with those previously accepted by the County for this or other development projects in the County.
- 13.4.** Within forty-five (45) calendar days of delivery of the information required under Paragraph 13.3, the County Planning and Development Services Department shall determine the sufficiency of the replacement security in its reasonable discretion, which can include letters of credit, performance bonds, or other forms of security consistent with those previously accepted by the County for this or other development projects. The County shall have the discretion to require security having a greater value (i.e. a larger face amount) than the security being replaced related to that CUP area when such security is subject to increase pursuant to the provisions of the CUP. Notwithstanding the failure of any assignee to execute the assignment or provide the required security, the burdens of this Agreement shall be binding upon such assignee, but the benefits of this Agreement shall not inure to such assignee until and unless such assignment is executed, and such security is provided and the County has delivered a written release to Developer confirming the sufficiency of the replacement security.

- 13.5. Notwithstanding any sale, transfer, or assignment, Developer shall continue to be obligated under this Agreement until the County executes a release of such financial security. The County's unreasonable failure to approve the assignment or execute such release may be a default under Section 18 of this Agreement.
- 13.6. County shall be reimbursed by Developer for any costs of review of the replacement financial security instrument(s).
14. **RELATIONSHIP OF COUNTY AND DEVELOPER.** The contractual relationship between County and Developer arising out of this Agreement does not create an agency relationship.
15. **INDEMNIFICATION AND HOLD HARMLESS.**
- 15.1. Developer shall indemnify and shall hold the County, its officers, agents, attorneys and employees harmless from third-party liability, claims, demands, expenses or costs, including but not limited to costs of experts and separate attorneys chosen by County at County's sole discretion: (1) to attack, set aside, void or annul this Agreement, any entitlement, CUP, approval or the certification of any environmental document accompanying such entitlements, or any determination made under such CUP or this Agreement, whether there is concurrent, passive, or active negligence on the part of the County, its officers, agents, attorneys, or employees; or (2) for personal injury (including but not limited to death), property damages, just compensation, judicial or equitable relief, arising or alleged to arise from the direct or indirect operations of the Developer or its contractors, subcontractors, agents, employees, or other persons acting on Developer's behalf that relate to the Project (including but not limited to Developer's actions or failure to act in drilling, grading, construction, operation, abandonment, reclamation or decommissioning) of the Project or any CUP.
- 15.2. Developer shall execute County's most current form of indemnification funding agreement. County and Developer shall cooperate in the defense against claims subject to these indemnities and Developer shall enter into the applicable form of agreement to confirm such joint defense. Notwithstanding, Developer's failure to provide payment of any fees or costs required under this Agreement shall cause Developer to be in non-compliance with this Agreement. Upon notification of such non-compliance, County may, at its sole discretion, cease processing of the Project or defending any lawsuit or paying for costs associated with the Project.
16. **AMENDMENT OR CANCELLATION.** This Agreement may be amended or canceled by the mutual consent of County and Developer, in the manner set forth in California Government Code section 65868 and County of Imperial Codified Ordinances Sections 92306.00 and 92306.01.
17. **MINOR MODIFICATION.** Unless as otherwise required by law (including but not limited to the County of Imperial Codified Ordinances) interpretations and minor modifications or changes can be made to the Project with the mutual agreement of Developer and the County's Planning Director, only in one (1) of the following circumstances:

(a) Where the change is: (i) ministerial or mutually agreeable to the County's Planning Director and Developer; (ii) constitutes an administrative interpretation or less than significant amendment; (iii) constitutes a change or technical modification to the design, construction, and/or operation of the Project under the existing applicable rules, regulations, and laws of the County; or (iv) amends the CUP to allow development and operation of the Project subject to two (2) or more CUPs, provided that the subsequent CUPs shall be bound by the effective date and term of the original CUP, and does not:

1. Alter the permitted uses of the Property as a whole or within any CUP;
2. Increase the density or intensity of use of the Property as a whole or within any CUP;
3. Increase the maximum height and size of permitted buildings or structures;
4. Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole;
5. Conflict with a condition of approval or MMRP provision; or
6. Constitute a discretionary approval by the County for which a subsequent or supplemental environmental impact report would be required pursuant to Section 21166 of the California Public Resources Code.

(b) Where the change is ministerial, mutually agreeable to County and Developer, and constitutes an administrative interpretation, less than significant amendment, or change or technical modification to the design, construction, and/or operation of the Project under the existing applicable rules, regulations, and laws of non-County agencies as to Project matters within their sole jurisdiction.

18. **DEFAULT.** A default under this Agreement shall be deemed to have occurred upon the happening of one or more of the following events or conditions:

- (a) A warranty, representation, or statement made or furnished in this Agreement by either Party proves to have been false in any material respect when it was made.
- (b) A finding by County pursuant to County of Imperial Codified Ordinances Sections 92308.00 and 92308.01, based on substantial evidence, that the Developer has not complied in good faith with one or more of the terms or conditions of this Agreement.
- (c) Any other act or omission by either Party which breaches or materially interferes with the terms of this Agreement.
- (d) A default under this Agreement with respect to obligations owed to the County by the Developer shall not constitute a default under this Agreement to the extent this Agreement has been partially assigned to another entity in accordance with Section 13, and a default under this Agreement with respect to obligations owed to the County by an assignee of a portion hereof in accordance with Section 13 shall not constitute a default under this Agreement by the Developer.

**19. PROCEDURE UPON DEFAULT.**

**19.1.** Upon the occurrence of default by Developer or County, prior to any proceedings pursuant to Title 9, Division 23 of the County of Imperial Codified Ordinances, and as an informal resolution procedure prior to any litigation being filed (including but not limited to any breach of contract action), the non-defaulting party shall provide the other party written notice specifying the nature of the alleged default and the actions required to cure such default. Such notice shall not be required in the event the default creates a threat to public health and safety.

**19.2.** After proper notice, the non-defaulting Party has the option to terminate the Agreement if: (1) the defaulting Party fails to take such actions or otherwise cure such default within forty-five (45) calendar days after the receipt of such notice; or (2) in the event that such default cannot be cured within such forty-five (45) calendar day period but can be cured within a longer time, the defaulting party fails in such forty-five (45) day period to commence the actions necessary to cure such default and to diligently proceed to complete such actions and cure such default.

**19.3.** All other remedies at law or in equity which are not inconsistent with the provisions of this Agreement are available to County and Developer to pursue in the event there is a default.

**20. LEGAL ACTION.** Either Party may institute legal action to cure, correct, or remedy any default, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation, or to compel specific performance. In no event shall County or its officers, employees or agents be liable in damages for any breach of this Agreement, it being expressly understood and agreed that the sole remedy available to Developer for a breach of this Agreement by County shall be a legal action in mandamus, specific performance (including the return of protested fees or other payments), injunction or declaratory relief to enforce the Agreement.

**21. ATTORNEYS' FEES.** In the event any legal action is brought to enforce or construe this Agreement, the prevailing Party shall be entitled to an award of reasonable attorneys' fees, expert witness and consulting fees, and litigation costs.

**22. DISCRETION TO ENCUMBER.** This Agreement shall not prevent or limit Developer from encumbering the Property, or any improvement on the Property, by any mortgage, deed of trust, or other security device.

**23. ENTIRE AGREEMENT; WAIVER AND RECORDED STATEMENT.** This Agreement constitutes the entire understanding and agreement of County and Developer with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between County and Developer respecting this Agreement. Any County waivers of the provisions of this Agreement must be authorized by the terms of this Agreement or by County ordinance and approved as set out therein. Any waiver by Developer shall be in writing. No waiver of any term or condition of this or any determination of a protest hereunder shall be a continuing waiver or determination hereunder. Upon the completion of performance of this Agreement, or its revocation or

termination, a statement evidencing completion, revocation, or termination signed by the appropriate agents of County shall be recorded in the Official Records of Imperial County, California.

**24. NOTICES.**

**24.1.** All notices or deliveries required or provided for by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the following:

**COUNTY**

County of Imperial  
Attn: County Executive Officer  
940 W. Main St., Suite 208  
El Centro, CA 92243

With a copy to:

County of Imperial Planning Department  
Attn: Planning Director  
801 Main Street  
El Centro, CA 92243

**DEVELOPER**

RWE Clean Energy  
Attn: Cristina Gispert  
101 West Broadway, Suite 1120  
San Diego, CA 92101

**24.2.** County or Developer may change its address by giving notice in writing to the other Party. All notices or deliveries shall be deemed to have been given when received.

**25. CAPTIONS.** The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify, or aid in the interpretation, construction, or meaning of any provision of this Agreement.

**26. RECORDING.** The Clerk of the Board shall cause a copy of this Agreement to be recorded with the Office of the County Recorder of Imperial County, California, within ten (10) days following the execution of this Agreement, pursuant to California Government Code Section 65868.5.

**27. INTERPRETATION AND GOVERNING LAW.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the state of California.

**28. VENUE.** In the event of any legal or equitable proceeding arising out of or relating to this Agreement, the Parties agree that venue shall lie only in the federal or state courts located in the County of Imperial.

29. **TIME OF ESSENCE.** Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.
30. **UNENFORCEABLE PROVISIONS.** The terms, conditions, and covenants of this Agreement shall be construed, whenever possible, as consistent with applicable laws and regulations. To the extent that any provision of this Agreement as so interpreted is held to violate any applicable law or regulation, the remaining provisions shall nevertheless be carried into full force and effect and remain enforceable.
31. **REPRESENTATION OF CAPACITY TO EXECUTE CONTRACT.** Each Party to this Agreement represents and warrants that the person or persons signing have the authority to execute this Agreement on behalf of the Party represented by those individuals.
32. **NO WAIVER.** The failure of either Party to enforce any term, covenant, or condition of this Agreement on the date it is to be performed shall not be construed as a waiver of that Party's right to enforce this or any other term, covenant, or condition of this Agreement at any later date, or as a waiver of any term, covenant, or condition of this Agreement.
33. **COUNTERPARTS.** This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all the Parties had executed the same instrument.
34. **FORCE MAJEURE.** Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations is beyond its reasonable control, such as, floods, earthquakes, acts of God, fires, wars, riots or similar hostilities, strikes, epidemics and other labor difficulties. Economic factors shall not be considered beyond the reasonable control of a Party.
35. **GENDER, NUMBER AND INTERPRETATION.** As used herein, the neutral gender includes the masculine and feminine, the feminine gender includes the masculine, and the masculine gender includes the feminine. As used herein, the singular of any word includes the plural. In the event of an ambiguity, there shall be no presumption against the drafter, all Parties hereto being represented by counsel.
36. **FURTHER COOPERATION.** Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement, and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute with acknowledgment or affidavit (if reasonably required) and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and fulfill the provisions of this Agreement, or to evidence or consummate the transactions contemplated by this Agreement. Notwithstanding the foregoing sentence, if Developer delivers to County a written request for an estoppel certificate confirming that there is no default under this Agreement, that this Agreement is in full force and effect, or that this Agreement has not been amended, then the County shall use its best efforts to respond within twenty (20) calendar days of the provision of such estoppel certificate and all necessary supporting information for such issuance.


37. **SURVIVAL.** Developer's payment obligations to County as specified in Sections 9 and 10 shall survive the expiration or termination of this Agreement.

**IN WITNESS WHEREOF**, the Parties have notarized and executed this Agreement as of the Effective Date stated in this Agreement as authorized by Ordinance No. \_\_\_\_\_ of the Board of Supervisors of the County of Imperial.

**County of Imperial**

~~RWE Clean Energy~~ <sup>PS</sup>  
CED Wistaria Solar 2, LLC

By: \_\_\_\_\_  
John Hawk, Chairman  
Imperial County Board of Supervisors

By:  \_\_\_\_\_  
Pete Solomon  
Regional Vice President, Utility-Scale  
Development

Date: \_\_\_\_\_

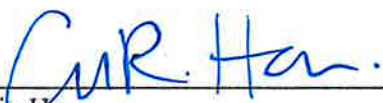
Date: 8/12/25

**ATTEST:**

By: \_\_\_\_\_  
Cynthia Medina, Clerk of the Board,  
County of Imperial, State of California

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By:  \_\_\_\_\_  
Eric Havens  
County Counsel

Date: 8/13/25



**Exhibit A**  
**Legal Descriptions**

**CUP 13-0038**

Parcel II:

THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

EXCEPTING THEREFROM, THE WEST 25 FEET *AND* THE SOUTH 25 FEET THEREOF, CONVEYED TO THE COUNTY OF IMPERIAL BY DEED RECORDED DECEMBER 10, 1937, IN BOOK 475, PAGE 325 OF OFFICIAL RECORDS.

(APN: 052-180-045)

**CUP 13-0039**

Parcel II:

THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

(APN: 052-180-034)

THAT PORTION OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

PARCEL 2 ON PARCEL MAP M-1420 ON FILE IN BOOK 6, PAGE 4 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY.

(APN: 052-180-054)

**CUP 13-0040**

Parcel III:

LOTS 3 AND 4 *AND* THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

(APN: 052-180-015)

**CUP 13-0041**

Parcel II:

LOTS 1 AND 2 *AND* THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 17 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

(APN: 052-180-012)

**CUP 13-0042**

Parcel 3:

LOTS 3 AND 4 IN SECTION 3, TOWNSHIP 17 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, ACCORDING TO THE OFFICIAL PLAT THEREOF.

(APN: Portion of 052-180-011)

Parcel 4:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 17 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, ACCORDING TO THE OFFICIAL PLAT THEREOF.

(APN: Portion of 052-180-011)

Parcel I:

THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 17 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

EXCEPTING THEREFROM, THAT PORTION LYING SOUTH OF THE GREESON DRAIN.

(APN: 052-180-002)

THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 17 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE MAP OF THE OFFICIAL GOVERNMENT PLAT THEREOF.\

(APN: 052-180-001)

Parcel I:

THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 17 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

(APN: 052-170-014)

Parcel 2:

LOTS 22 AND 25 IN SECTION 33, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, ACCORDING TO THE OFFICIAL PLAT THEREOF.

(APN: 052-440-009)

**CUP 13-0043**

Parcel 1:

THAT PORTION OF TRACT 213, BEING THAT PORTION OF SECTION 34, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 14, SECTION 34; THENCE RUNNING SOUTH 00°07'00" EAST, A DISTANCE OF 1,102.20 FEET TO THE SOUTHWEST CORNER OF LOT 22, OF SAID SECTION; THENCE NORTH 89°58'00" WEST, A DISTANCE OF 17.00 FEET TO A POINT; THENCE SOUTH 00°22'00" WEST, A DISTANCE OF 304.03 FEET TO A POINT; THENCE NORTH 89°58'00" WEST, A DISTANCE OF 1,220.52 FEET TO A POINT; THENCE NORTH 00°07'00" EAST, A DISTANCE OF 1,406.50 FEET TO A POINT INTERSECTING THE NORTH BOUNDARY OF LOT 12, IN SAID SECTION 34; THENCE SOUTH 89°58'00" EAST, A DISTANCE OF 1,238.85 FEET TO THE POINT OF BEGINNING.

(APN: Portion of 052-350-021)

Parcel 2A:

THAT PORTION OF TRACT 213 *AND* PORTION OF LOTS 30 AND 32 IN SECTION 34, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID TRACT 213; THENCE SOUTH, ON AND ALONG THE WEST LINE OF SAID TRACT, 40 FEET; THENCE EAST, ON A LINE PARALLEL WITH THE NORTH LINE OF SAID TRACT, 296.00 FEET; THENCE SOUTH, ON

A LINE PARALLEL WITH THE WEST LINE OF SAID TRACT,

296.00 FEET; THENCE WEST, ON A LINE PARALLEL WITH THE NORTH LINE OF SAID TRACT, 296.00 FEET TO THE WEST LINE OF SAID TRACT; THENCE SOUTH, ON AND ALONG THE WEST LINE OF SAID TRACT, 2,304 FEET TO THE SOUTHWEST CORNER OF SAID TRACT; THENCE EAST, ON AND ALONG THE SOUTH LINE OF SAID TRACT, 260.04 FEET; THENCE SOUTH 20.04 FEET; THENCE EAST, ON A LINE PARALLEL WITH THE SOUTH LINE OF SAID TRACT, 2,196.13 FEET; THENCE NORTH 00°22'00" EAST, 1,262.18 FEET; THENCE WEST 1,220.52 FEET; THENCE NORTH 00°07'00" WEST

1,406.50 FEET TO THE NORTH LINE OF SAID TRACT; THENCE WEST, ON AND ALONG THE NORTH LINE OF SAID TRACT, 1,238.80 FEET TO THE NORTHWEST CORNER OF SAID TRACT, THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THE RIGHT AND TITLE TO THE STRUCTURES, TREES AND MAJOR VEGETATION LOCATED ON THAT PORTION OF THE PROPERTY LYING WITHIN THE NORTHERLY

300.00 FEET OF THE WESTERLY 600.00 FEET OF SAID TRACT 213, AS CONVEYED TO SAN DIEGO GAS AND ELECTRIC COMPANY, A CORPORATION, BY DEED RECORDED SEPTEMBER 29, 1982 IN BOOK 1490, PAGE 1200 OF OFFICIAL RECORDS.

(APN: Portion of 052-350-021)

Parcel 2B:

All structures, trees and major vegetation situated on:

THE NORTHERLY 300.00 FEET OF THE WESTERLY 600.00 FEET OF TRACT 213, SECTION 34, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, ACCORDING TO THE OFFICIAL PLAT THEREOF, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM, THAT PORTION OF TRACT 213, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID TRACT 213; THENCE SOUTH ON THE WEST LINE OF SAID TRACT, 40.00 FEET TO THE POINT OF BEGINNING; THENCE EAST 296.00 FEET; THENCE SOUTH

296.00 FEET; THENCE WEST 296.00 FEET TO THE WEST LINE OF SAID TRACT; THENCE NORTH, ON THE WEST LINE OF SAID TRACT, 296.00 FEET TO THE POINT OF BEGINNING.

(APN: Portion of 052-350-021)

Parcel 3:

THAT PORTION OF TRACT 213, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID TRACT 213; THENCE SOUTH ON THE WEST LINE OF SAID TRACT, 40.00 FEET TO THE POINT OF BEGINNING; THENCE EAST 296.00 FEET; THENCE SOUTH 296.00 FEET; THENCE WEST 296.00 FEET TO THE WEST LINE OF SAID TRACT; THENCE NORTH, ON THE WEST LINE OF SAID TRACT, 296.00 FEET TO THE POINT OF BEGINNING.

(APN: 052-350-022)

**CUP 13-0044**

Parcel 1:

THE SOUTH HALF OF TRACT 155, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, ACCORDING TO THE OFFICIAL PLAT THEREOF.

(APN: 052-440-006)

**CUP 13-0045**

LOT 35 IN SECTION 34 *AND* LOT 36 IN SECTION 35, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, *AND* THAT PORTION OF TRACT 293, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, , IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT 292; THENCE SOUTH 89°53'00" WEST ALONG SAID LINE OF SAID TRACT, 2,718.00 FEET, MORE OR LESS, TO A POINT IN THE EAST BANK OF THE IRRIGATION CANAL; THENCE NORTH 00°07'00" WEST 1,023.36 FEET, MORE OR LESS, TO THE CENTER LINE OF THE COUNTY ROAD MARKING THE NORTH BOUNDARY OF THE WITHIN DESCRIBED LAND; THENCE NORTH 89°53'00" EAST ALONG SAID CENTER LINE OF SAID COUNTY ROAD, 1,625.00 FEET TO A POINT; THENCE NORTH 75°29'00" EAST ALONG SAID CENTER LINE OF SAID ROAD, 234.00 FEET TO A POINT; THENCE NORTH 42°47'00" EAST ALONG CENTER LINE OF SAID ROAD, 951.00 FEET, MORE OR LESS, TO THE LINE OF THE TRACT OF LAND CONVEYED BY I. W. VAN DORIN AND HENRIETTA VAN DORIN TO HERBERT POTTER AND LETTIE POTTER, BY DEED DATED MAY 20, 2008, RECORDED IN BOOK 39, PAGE 33 OF DEEDS; THENCE SOUTH 66°05'00" EAST ALONG CENTER LINE OF SAID COUNTY ROAD AND ALONG SAID LINE OF SAID POTTER'S LAND TO A POINT IN EAST LINE OF SAID TRACT 293, WHICH POINT IS ALSO THE SOUTHEAST CORNER OF THE

LAND CONVEYED AS ABOVE TO SAID POTTER; THENCE SOUTH 00°07'00" EAST, ALONG SAID EAST LINE OF SAID TRACT TO THE POINT OF BEGINNING.

(APN: 052-350-020)

**CUP 13-0046**

Parcel 2:

TRACT 212, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, ACCORDING TO THE OFFICIAL PLAT THEREOF.

(APN: 052-350-001)

Parcel 3:

THAT PORTION OF TRACTS 97 AND 293, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

PARCELS A, B, C AND D OF THAT CERTAIN SURVEY ON FILE IN BOOK 10, PAGE 6 OF LICENSED SURVEY MAPS, RECORDS OF IMPERIAL COUNTY.

(APN: 052-350-001; -002 and -004)

THOSE PORTIONS OF TRACTS 97 AND 293, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, INCLUDED WITHIN THE FOLLOWING DESCRIBED BOUNDARIES:

BEGINNING AT A POINT IN THE NORTH LINE OF THE COUNTY ROAD WHICH IS NORTH 89°59'00" WEST, 279.30 FEET AND SOUTH 36°43'00" EAST, 341.50 FEET FROM THE SOUTHEAST CORNER OF SAID TRACT 97, SAID POINT OF BEGINNING BEING THE SOUTHEAST CORNER OF PARCEL C AS SHOWN ON A LICENSED SURVEY MAP ON FILE IN BOOK 10, PAGE 6; THENCE NORTH 36°43'00" WEST, 1,286.90 FEET; THENCE NORTH 26°56'16" WEST, 387.87 FEET; THENCE SOUTH 89°59'00" EAST, 401.75 FEET; THENCE SOUTH 49°13'30" EAST, 594.21 FEET TO THE NORTHEAST CORNER OF PARCEL BAS SHOWN ON SAID SURVEY MAP; THENCE SOUTH 49°33'00" WEST, 242.80 FEET; THENCE SOUTH 38°01'00" EAST, 1,023.70 FEET TO THE NORTH LINE OF THE COUNTY ROAD; THENCE WESTERLY ALONG THE COUNTY ROAD TO THE POINT OF BEGINNING.

(APN: 052-350-003)

**CUP 13-0048**

THE EAST 2,655.00 FEET OF TRACT 154, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SAN

BERNARDINO BASE AND MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

(APN: 052-440-005)

**CUP 13-0049**

Parcel II:

THE WEST 60 FEET OF TRACT 154, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, ACCORDING TO THE OFFICIAL PLAT THEREOF, *LYING* NORTH OF THE IMPERIAL IRRIGATION DISTRICT DRAINAGE CANAL AS LOCATED JULY 25, 1936.

(APN: 052-440-003)

Parcel I:

The North 20 feet of the West 2,625 feet of Tract 154, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: Portion of 052- 440-004)

Parcel III:

THE WEST 2,625 FEET OF TRACT 154, TOWNSHIP 16 SOUTH, RANGE 13 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM, THE NORTH 20 FEET THEREOF.

ALSO EXCEPTING THEREFROM, THE WEST 60 FEET THEREOF *LYING* NORTH OF THE IMPERIAL IRRIGATION DISTRICT DRAINAGE CANAL AS LOCATED JULY 25, 1936.

(APN: Portion of 052-440-004)

**ATTACHMENT “E”**

**UPDATE AND REQUEST FOR REVISION**  
**FROM CEO /MINUTE ORDER #10C**  
**/RECORDED DEVELOPMENT AGREEMENT**  
**DATED 08 11 2015**



COUNTY EXECUTIVE OFFICE

**Dr. Kathleen Lang**  
County Executive Officer  
[KathleenLang@co.imperial.ca.us](mailto:KathleenLang@co.imperial.ca.us)  
[www.co.imperial.ca.us](http://www.co.imperial.ca.us)



County Administration Center  
940 Main Street, Suite 208  
El Centro, CA 92243  
Tel: 442-265-1001  
Fax: 442-265-1010

July 29, 2025

Cristina Gispert  
Director, Utility-Scale Development Region West  
RWE Clean Energy  
101 West Broadway, Suite 1120  
San Diego, CA 92101

RE: Wistaria II Development Agreement – Update and Request for Revision

Dear Ms. Gispert:

On August 10, 2015, the Imperial County Board of Supervisors approved the Wistaria Ranch Solar Project, which included 16 Conditional Use Permits (CUPs) and an associated Development Agreement (DA), formally recorded on August 11, 2015. The project was originally subject to the 2012 Agricultural and Community Benefit Fees, as well as applicable fire mitigation fees. To date, the full build-out of the project remains incomplete.

RWE Clean Energy (RWE), the project proponent, has submitted a formal request for an additional 10-year extension of the DA to allow for the development of the remaining CUPs, now collectively referred to as “Wistaria II.” This phase encompasses approximately 1,832 acres and includes CUPs 13-0038 through 13-0046 and CUPs 13-0048 and 13-0049. RWE has acknowledged and accepted the County’s updated Public Service Fee schedule adopted in May/November 2023: \$600 per acre for farmland and \$450 per acre for non-farmland.

In accordance with Imperial County Ordinance No. 1448, all Development Agreements must demonstrate consistency with the County’s General Plan, compliance with zoning regulations, alignment with sound land use planning principles, mitigation of adverse impacts, and provision of substantial public benefits.

As part of the public benefit obligation under the DA, the County and RWE have continued negotiations regarding a non-refundable contribution based on the 1,832 acres—primarily designated as farmland.

RWE proposed a one-time public benefit contribution of \$1.1 million to the County of Imperial, on May 8, 2025, which would be paid to the County on or before the issuance of the 1<sup>st</sup> Building Permit. Additionally, RWE agrees to pay \$10,000 at time of recording for the initiation of the DA. The County of Imperial requests that RWE submit a letter, on company letterhead, formalizing the terms of this agreement.

Should you have any questions or require further clarification, please do not hesitate to reach out.

Sincerely,

  
Dr. Kathleen Lang  
County Executive Officer

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**MINUTE ORDER  
OF  
IMPERIAL COUNTY  
BOARD OF SUPERVISORS**

<b>Date:</b> December 30, 2014	<b>Book:</b> 416	<b>Page:</b> 086	<b>File #:</b> 1710.2	<b>M.O.#:</b> 10c
<b>Department:</b> PLANNING & DEVELOPMENT SERVICES			<b>2nd Page:</b>	

THE BOARD OF SUPERVISORS OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, on a motion by Supervisor : CASTILLO , second by Supervisor : R. KELLEY and approved by the following roll call vote;

**AYES :** RENISON, TERRAZAS, M. KELLEY, R. KELLEY, CASTILLO

**NAYES :** NONE

**ABSTAINED :** NONE

**EXCUSED OR ABSENT :** NONE

**PUBLIC HEARING**

- c. Approved Ordinance No. 1502 approving the Development Agreement and Findings and schedule for adoption on January 6, 2015.

**RECEIVED**

JAN 12 2015

IMPERIAL COUNTY  
PLANNING & DEVELOPMENT SERVICES

<b>Topic:</b> Public Hearing - Wistaria Solar		<b>X-Topic:</b> Ordinance No. 1502	
<b>CC:</b>	<input checked="" type="checkbox"/> File	<input checked="" type="checkbox"/> CEO	<input type="checkbox"/> Fire/OES
	<input type="checkbox"/> Ag. Comm	<input type="checkbox"/> County Clerk	<input type="checkbox"/> HR - Risk
	<input type="checkbox"/> Assessor	<input type="checkbox"/> County Counsel	<input type="checkbox"/> Info/Tech
	<input checked="" type="checkbox"/> Auditor	<input type="checkbox"/> District Attorney	<input type="checkbox"/> OET
	<input type="checkbox"/> Behavioral Health	<input type="checkbox"/> Facilities Manag	<input checked="" type="checkbox"/> Planning
	<input type="checkbox"/> Probation	<input type="checkbox"/> Public Health	<input type="checkbox"/> Public Works
	<input type="checkbox"/> Sheriff-Coroner	<input type="checkbox"/> Social Services	<input type="checkbox"/> Other...

**CHUCK STOREY**

COUNTY CLERK/RECORDER

IMP IMPERIAL COUNTY

Recording requested by, and  
when recorded return to:

Clerk of the Board of Supervisors  
County of Imperial  
940 W. Main St., Ste. 209  
El Centro, CA 92243

Doc#: **2015017224**

\* \$ R 0 0 0 0 1 6 4 0 2 4 \$ \*

Titles: 1 Pages: 45

Fees 239.00

Taxes 0.00

Other 0.00

PAID 239.00

Recorded fee-exempt  
pursuant to Govt. Code  
Section 6103

### **Imperial County Development Agreement Concerning Wistaria Ranch Solar Energy Center**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into on December 30, 2014 (but effective on the Effective Date as defined in Section 4.1) by and between the County of Imperial, a political subdivision of the state of California, ("County") and Wistaria Ranch Solar, LLC ("Developer") (collectively referred to as "Parties") with respect to the development of real property in the County, known as the Wistaria Ranch Solar Energy Center Project.

**1. Authorization.** California Government Code Sections 65864 through 65869.5 and Title 9, Division 23 of the County of Imperial Codified Ordinances (County Code Sections 92301 – 92309) authorize the County to enter into binding development agreements with persons having legal or equitable interests in real property for the development of the property in order to establish certainty in the development process.

### **2. Property and Project Description.**

**2.1 Property Description.** The real property which is the subject of this Agreement consists of individual parcels within the area south of Interstate 8, east of Pulliam Road, and north of the All American Canal, in southwestern unincorporated Imperial County, generally bound by Wahl Road on the north, Brockman and Rockwood Roads on the west, and the U.S./Mexico border on the south, and Ferrell and Corda Roads on the east and is more particularly described in Exhibit A attached hereto ("Property").

**2.2 Project Description.** The development that is the subject of this Agreement consists of the project as described in the Final EIR certified by the Board of Supervisors for the Project. Generally, the project consists of 16 conditional use permits (CUPs) and 16 Variances and related improvements as more fully described in section 5 of this Agreement ("Project").

**3. Legal or Equitable Interest in Property.** Developer is the holder of options to lease or purchase the Property from the legal owners and has the consent of the legal owners to enter into this Development Agreement.

#### **4. Approvals.**

**4.1** This Development Agreement was approved by Ordinance No.1502 (“DA Ordinance”), introduced on December 30, 2014, and adopted on January 27, 2015 and effective 30 days from the date of adoption, or February 26, 2015 (“Effective Date”).

**4.2**, As of the Effective Date, this Development Agreement has been given all required discretionary approvals from the following County entities:

Environmental Evaluation Committee  
Planning Commission  
Board of Supervisors

**4.3** County and Developer agree that the Planning Commission and Board of Supervisors provided their recommendations and discretionary approvals for the Project and received all public testimony thereon at public hearings properly noticed as provided in Government Code Sections 65867, 65090 and 65091 and County Code Section 92303 in addition to any other notice required by law for other actions considered concurrently with the Agreement.

**4.4** County and Developer agree that all environmental impacts associated with the development of the Project as provided under this Agreement have been analyzed and adequately addressed in the FEIR in accordance with CEQA, and that the adoption of this Agreement will not result in any new or different significant environmental effect, or substantial increase in severity of a previously identified significant environmental impact considered in the certified FEIR.

#### **5. Entitlements; Statutory Requirements for Development Agreement: Permitted Uses; Density/Intensity of Use; Height and Size; Dedication of Public Lands**

**5.1 Entitlements.** The County Board of Supervisors has approved the following land use entitlements for the Property, which entitlements and their implementation are the subject of this Agreement:

**5.1.1** Wistaria Ranch Solar Energy Center Conditional Use Permits 13-0036 thru 13-0048 and 13-0048 through 13-0052

**5.1.2** Wistaria Ranch Solar Energy Center Variances 13-0002 thru 13-0011, and 13-0013 through 13-0018

**5.1.3** Wistaria Ranch Solar Energy Center Final Environmental Impact Report (FEIR)

**5.1.4** Wistaria Ranch Solar Energy Center CEQA Findings and Mitigation Monitoring and Reporting Program

**5.2 Permitted Uses.** The permitted uses of the Property are those uses authorized and described in the CUPs and Variances, those uses described in the FEIR, and those uses allowed by right within the existing zone.

**5.3 Density/Intensity of Use.** The permitted density and intensity of use shall not exceed the density and intensity of the uses authorized and described in the CUPs and Variances, those uses described in the EIR, or those uses allowed by right within the existing zone.

**5.4 Height and Size.** The permitted height and size of proposed structures shall be the limits allowed by the existing zone except for structures qualified to exceed the high limit described in the Variances.

**5.5 Dedication/Reservation Public Lands.** The provisions for reservation or dedication of lands for public purposes are those described in the EIR for open space or habitat protection.

#### **6. Duration of Agreement and Entitlements; Phasing; and Early Termination of CUP's**

**6.1** The term of this Agreement shall commence on the Effective Date as defined in Section 4.1 and shall extend until the latest date on which any CUP is outstanding, but in no case shall the term of this Agreement or of any CUP be longer than forty (40) years from the Effective Date.

**6.1.1.** Any CUP on which Commencement of Construction (as defined below) has not commenced by the tenth (10<sup>th</sup>) anniversary of the Effective Date shall be of no further force and effect. In that event, the parties agree that notwithstanding any other provisions of this Agreement or the entitlements, any CUP not so commenced and the associated Variance(s) terminate on that tenth anniversary date without notice or hearing. Developer agrees that such termination is voluntarily negotiated and waives any notice or public hearing of such termination. Developer agrees that there shall be no vested right and no legal remedy available to Developer if any CUP terminates for failure to Commence Construction.

**6.1.2.** Notwithstanding any other provisions of this Agreement or the entitlements, in no event shall any entitlement exceed forty (40) years from the Effective Date of this Agreement. Such termination of the entitlements is consensual and shall not be subject to a public hearing.

**6.1.3.** As used here, "Commence Construction" or "Commencement of Construction" means the earlier of the date on which Developer obtains a grading permit or building permit, as may be applicable, in reliance on a CUP. Developer agrees that there shall be no vested right and no legal remedy available to Developer if such Conditional Use Permit terminates for failure to Commence Construction.

**6.2** The term of this Agreement may terminate sooner as provided herein.

**6.3** This Agreement shall run with the land in each CUP for the term of this Agreement and shall bind each and every owner of such land.

**6.4** The Project may be constructed in phases with each CUP serving as an individual phase. No phase shall be smaller than a single CUP. The Project may also be constructed in groups of CUPs.

## **7. Rules, Regulations and Policies.**

**7.1** County acknowledges that Developer would not enter into this Agreement or agree to provide the public benefits and improvements described in this Agreement if it were not for the commitment of the County that the Property can be developed, in accordance with County's ordinances, rules, regulations, and policies, including but not limited to, those governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications applicable to the development of the Property existing as of the Effective Date of this Agreement, as set out in this Agreement.

7.1.1 Notwithstanding, the Planning Director is authorized to and shall apply the landscaping requirements of Title 9 to this Project in the same manner as applied to other solar projects.

**7.2** Property shall not be subject to any subsequently enacted amendment, modification of, or substitution for, the General Plan, zoning, or subdivision ordinances without the mutual written consent of the County and Developer, except as otherwise provided here.

**7.3** Except as otherwise provided in this Agreement, Developer shall have the right, to the fullest extent permitted under California Government Code Sections 65864 et seq. and provisions of the County Code, to (1) develop the Property in accordance with this Agreement, rules, regulations, ordinances, policies, conditions, environmental regulations, exactions, entitlements, assessments, payments and fees applicable to and governing development of the Property in effect as of the Effective Date of this Agreement and (2) develop the Property with respect to the permitted use(s) of land, density, and intensity of use(s), and timing and phasing of development as generally described in this Agreement and in the entitlements set forth in Section 5 of this Agreement in effect as of the Effective Date of this Agreement, provided that:

**7.3.1** Developer acknowledges that the Project must comply with all future amendments, modifications, or alterations of County's building, plumbing, mechanical, electrical, signage and fire codes.

**7.3.2** If a conflict between this Agreement and federal or state laws or regulations arises that prevents or precludes compliance with one or more provisions of this Agreement, such provisions of the Agreement shall without further action by either party be deemed suspended as may be necessary to allow continuous compliance with such state or federal laws or regulations and such suspension shall mean that non-compliance with such suspended provisions shall not be a breach of this Agreement from and after the date on which such conflict arose. County and Developer shall meet and confer in good faith in a

reasonable attempt to modify the suspended terms of this Agreement to the extent feasible so that such terms, as modified, can be complied with without conflicting with federal or state laws or regulations.

**7.3.3** Nothing in this Agreement shall be construed to be in derogation of County's police power to protect the public health and safety in the event of a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services involving the Property or the community.

**7.3.4** Developer acknowledges that the Project must comply with any new or amended ordinance, resolution, rule, regulation or policy that does *not* conflict with the entitlements or those ordinances, resolutions, rules, regulations, and policies in effect at the Effective Date, and that is generally applied equally to all real property in the County with the same zoning designations and/or land uses. A conflict is one that would significantly reduce the Project's generation and transmission of solar energy or limit the authorized disturbance area within the CUP. Developer further acknowledges that this Agreement does not prevent the County from denying or conditionally approving any subsequent discretionary development project application on the basis of such existing or new rules or regulations.

**7.3.5** This Agreement shall not be construed to limit the authority or obligation of County to hold necessary public hearings, or to limit the discretion of County or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements of use that require the exercise of discretion by County or any of its officers or officials, provided that subsequent discretionary actions (a) shall not prevent or delay development of the Property for the uses and to the density and intensity of development as provided by this Agreement and the other Entitlements in effect as of the Effective Date of this Agreement, and (b) shall not be inconsistent with the Entitlements.

## **8. Infrastructure Capacity.**

**8.1** Subject to conditions of approval requiring specific upgrades, County hereby acknowledges that it has been informed that the Project will have sufficient capacity in its infrastructure, services, and utility systems, including, without limitation, traffic circulation, flood control, water supply, treatment, distribution, and service, to accommodate the Project.

## **9. Development Impact Fees.**

**9.1** Except as otherwise provided in this Agreement, specifically excluding fees set by entities not controlled by County that are collected by County, and specifically in addition to the Public Benefit payments in Section 10, County shall impose and Developer shall pay those fees, payments, charges, and costs, including, without limitation, dedications and any other fee or tax (such as excise, construction or any other tax) relating to development or the privilege of developing, which are in effect on a Countywide basis as of the Effective Date, and thereafter such fees including generally applicable increases in such fees that may be adopted from time to

time and are generally applicable on a Countywide basis, which include but are not limited to the following development impact fees, for which the Project is treated as “light industrial” which in the past has not included solar panels.

**9.1.1 General Plan Maintenance Fee.** In accordance with County Code 92302.01.B.1, prior to issuance of building permits, Developer shall pay County \$250 per non-residential units classified as “light industrial” as adjusted pursuant to County Code 4.32.080 or otherwise by the Board of Supervisors.

**9.1.2 Sheriff Mitigation Fees.** In accordance with County Code 92302.01.B.2, prior to issuance of building permits, Developer shall pay County \$117 per 1,000 square feet of non-residential units classified as “light industrial” as adjusted pursuant to County Code Section 4.32.080 or otherwise by the Board of Supervisors.

**9.1.3 Fire Mitigation Fees.** In accordance with County Code 92302.01.B.3, prior to issuance of building permits, Developer shall pay County \$405 per 1,000 square feet of non-residential units classified as “light industrial” as adjusted pursuant to County Code 4.32.080 or otherwise by the Board of Supervisors.

**9.1.4 Public Works Development Impact Fees.** Prior to the issuance of building permits, Developer shall pay County \$287 per 1,000 square feet of non-residential units classified as “light industrial” as adjusted pursuant to County Code 4.32.080 or otherwise by the Board of Supervisors

**9.1.5 General Government Development Impact Fees.** Prior to the issuance of building permits, Developer shall pay County \$248 per 1,000 square feet of non-residential units classified as “light industrial” as adjusted pursuant to County Code 4.32.080 or otherwise by the Board of Supervisors .

**9.2** Nothing in this section shall be construed to limit the authority of County to charge customary application, processing, and permit fees for land use approvals, building permits and other similar permits, which fees are designed to reimburse County's expenses attributable to such application, processing and permitting and are in force and effect on a County-wide basis at such time as said approvals and permits are granted by County.

**9.3** Nothing in this section shall be construed as a limitation on the Developer's right to a credit against development impact fees, as provided by applicable County rules, regulations or procedures. There is not and will not be credit for fire or other impact fees based upon any Public Benefit payment set forth in this Agreement.

**9.4** Unless otherwise provided in this Agreement or required by law, all development impact fees imposed by the County on the Project shall be due and payable to the County, per CUP, as set out in the applicable County Code Section, as that may be amended from time to time.



**9.5** Developer shall not oppose, protest or challenge the Development Impact fees to be paid in connection with the Project as set out in this Section.

**9.6** Nothing in this section shall prevent or preclude the County from adopting assessments, fees and charges (other than fees imposed on new development) or special taxes on property within the County to fund ongoing maintenance and operations for capital facilities, public improvements and/or services.

**10. Public Benefits Provided by Developer.** County acknowledges that Developer's performance under this Agreement provides significant public benefits to County, including, but not limited to:

**10.1 EIR Mitigation Measures and Conditions of Approval.** Notwithstanding any other provision in this Agreement to the contrary, if Developer elects to develop the Project on the Property, Developer shall be bound by, and shall perform, all CUP provisions, conditions of approval and mitigation measures for which Developer is responsible as contained in the Project entitlements and certified final EIR for the Project, as well as those provided in this Agreement, and failure to do so without prior County authorization shall be a default under this Agreement as well as the CUP. In the event of a conflict among the terms of Agreement, the CUP, and the EIR/MMRP, the hierarchy of documents that shall control the Parties' rights and obligations are the EIR, MMRP, then the Agreement, then the CUP.

**10.2 Agriculture Benefit.** Developer shall pay to the County the Agriculture Benefit payments pursuant to the County's Public Benefit Program for solar projects as set out in Resolution 2012-005 ("Resolution") for offsetting certain temporary impacts of the Project to the community, local economy and agriculture industry as identified in part in the Project's Fiscal Impact Analysis, Job Impact Analysis and Economic Impact Analysis. Such payments shall be applied by the County pursuant to Agricultural Benefit Funding Allocation Guidelines ("Guidelines") adopted by the Board of Supervisors on February 11, 2014, as may be revised from time to time.

As provided in the Resolution and Guidelines, the County shall utilize the agricultural benefit payment hereunder for stewardship, protection, and enhancement of agricultural lands within Imperial County; tools, technology, and techniques for protection of agriculture commodities or increase of crop yields; and support of programs or projects that increase agriculture industry employment opportunities.

**10.2.1 Payment Amounts.** Developer shall make Agriculture Benefit payments to the County on a CUP by CUP basis as follows:

**10.2.1.1** For every acre of Prime Farmland within each CUP, Developer shall pay \$5,000 per net farmable acre of land. As used here, "net farmable acre" means the acreage which historically has been farmed as identified in the reclamation plan for that CUP.

**10.2.1.2** For every acre of Farmland of Statewide Importance within the CUP, Developer shall pay \$2,000 per net farmable acre of land.

**10.2.1.3 Farming Reduction.** The base payment amount calculated under Section 10.2.1.1 or 10.2.1.2, as may be applicable, shall be reduced by ten percent (10%) for each year of the last ten (10) years prior to issuance of the CUP that the land was not farmed.

**10.2.1.4 Field Crop Reduction.** After the farming reduction is applied, the resulting total shall then be reduced by five percent (5%) for each year of the last ten (10) years prior to issuance of the CUP that the land was dedicated to the production of Field Crops as defined in the Imperial County Agricultural Commissioner's Report. Land fallowed under the IID fallowing program shall be counted as land dedicated to the production of Field Crops.

**10.2.1.5** No Agriculture Benefit payment shall be due or paid for any acres within the Project land that remain in agricultural production as part of a conservation/habitat program.

**10.2.1.6 Payment Due Date.** Developer shall pay the Agriculture Benefit payment due under this Section upon the issuance of the first grading permit within the applicable CUP.

**10.2.1.7** All amounts under this Section 10.2 shall be increased annually based upon the Consumer Price Index – Los Angeles SMSA – all urban consumers ("CPI"), but in no case shall the CPI be less than zero and such increases shall be applicable to the Developer of the applicable CUP.

**10.2.1.8** Developer shall have the right to pay the Agricultural Benefit payment due under this Section 10.2 for each CUP separately as set forth in Section 10.2.1.6 above. Developer shall pay the Agriculture Benefit payment for the entire net farmable acres of land within the applicable CUP as listed in Section 5 above. If within ninety (90) calendar days after issuance of any grading permit, no grading is commenced within that CUP, **and** the Project does not proceed to financial close, the Developer returns the grading permit unused to the County, and the land is available to be farmed per Section 5.2 of this Agreement, then because there is no impact to agriculture, the County shall refund the Developer's Agricultural Benefit payment for the applicable CUP, without interest, within thirty (30) days of the return of the grading permit.

**10.2.1.9** There are no protest provisions applicable to Agriculture Benefit fees.

**10.3 Community Benefit.** Developer shall pay to the County the Community Benefit payments pursuant to the County's Public Benefit Program for solar projects as set out in the Resolution and this Agreement. County shall utilize the Community Benefit payments to maximize the benefits of this solar project to the County of Imperial and its residents through funding eligible infrastructure improvements, job creation, and economic development.

**10.3.1** Developer shall pay the County the Community Benefit payment on a CUP by CUP basis as follows:

**10.3.1.1** Subject to Section 10.3.1.6 each year, from years 1 through 10, upon annual accrual of Community Benefit payments for the Project in any CUP, Developer shall pay \$150 per gross acre of land within the boundaries of that CUP.

**10.3.1.2** Subject to Section 10.3.1.6 each year, beginning in year 11, upon annual accrual of Community Benefit payments for the Project in any CUP, through the expiration of the term of that CUP, Developer shall pay \$200 per year per gross acre of land within the boundaries of the applicable CUP.

**10.3.1.3** The \$200 per acre payment shall be increased annually, starting in year 12, based upon the CPI, but in no case shall the CPI be less than zero.

**10.3.1.4 Date of Accrual.** The Community Benefit payments shall begin to accrue upon issuance of the final Certificate of Occupancy in the applicable CUP. In no event shall Community Benefit payments begin to accrue in the applicable CUP later than thirty (30) months after Commencement of Construction in that CUP. "Commencement of Construction" shall have the same meaning as set out in Section 6.1.3.

**10.3.1.5** The Community Benefit payment rates above are annual rates. However, the first Community Benefit payment installment in an amount equal to one-half of the amounts described in Section 10.3.1.1 or 10.3.1.2, as the case may be, are due under this Section and shall be due and payable to the County Executive Office six months following the date of accrual under Section 10.3.1.4 above.

**10.3.1.6** Community Benefit payment installments in an amount equal to one-half of the amounts described in Section 10.3.1.1 or 10.3.1.2, as the case may be, are due and shall be due and payable to the County Executive Office every six months thereafter.

**10.3.1.7** At the request of Developer, County may accept a lump sum payment per gross acre within the applicable CUP in lieu of the annual payment structure described in Sections 10.3.1.1 through 10.3.1.6 of this Agreement. The County Executive Office will calculate the lump sum fee by discounting the annual payments over the remaining CUP life to determine a discounted present value of the annual payments. Lump sum payments are eligible only for those credits which have been earned at the time of the lump sum payment. If the Developer chooses the lump sum payment method, the lump sum payment shall be paid in full, less any applicable credits, prior to issuance of the final certificate of occupancy within the applicable CUP but in no event later than thirty (30) months after the Commencement of Construction as defined in Section 6.1.3.

### **10.3.2 Incentives and Credits against Community Benefit Payments.**

#### **10.3.2.1 Hiring Incentives.**

**10.3.2.1.1** An annual credit of \$1,000 for each full-time equivalent Local Hire during construction of the Project. As used here, “Local Hire” is determined by the State of California Employment Development Department/Workforce Development records as utilized by the County. “Full-time equivalent” is defined in Section 10.3.3 below.

**10.3.2.1.2** An annual credit of \$500 for each full-time equivalent Veteran Hire during construction or during operation of the Project. As used here, “full-time equivalent Veteran Hire is determined by the State of California Employment Development Department/Workforce Development records as utilized by the County.

**10.3.2.1.3** An annual credit of \$1,500 for each full-time equivalent Permanent Local Hire during operation of the Project.

**10.3.2.1.4** Incentives under Sections 10.3.2.1.1, 10.3.2.1.2, and 10.3.2.1.3 shall be applied cumulatively if applicable.

**10.3.2.2 Scheduling/Coordination Contract Credit.** Developer is to be credited, on a dollar for dollar basis for any amounts paid by Developer during the applicable year under any contract between Developer and any Imperial County-based scheduling coordination firm to provide Scheduling/Coordination Services to the Project. Employees of the Imperial County-based scheduling coordination firm that is the subject of the contract used for the Scheduling/Coordination Contract Credit shall not be counted toward the Permanent Local Hire as set forth in Section 10.3.2.1.3. This credit shall not exceed \$80,000 in any applicable year.

**10.3.2.3 Education Fund Credit.** Developer is to be credited, on a dollar for dollar basis, to the extent there are monetary contributions to any local, recognized educational institution or 501(c)(3) organization for the purpose of providing scholarships or job training in Imperial County, in the year such contribution is funded.

#### **10.3.2.4 Early Start Credit.**

**10.3.2.4.1** Under the annual payment structure, if Developer Commences Construction in any CUP prior to December 31, 2016 and construction is completed (as evidenced by a final certificate of occupancy being issued) no later than thirty (30) months following the date Developer Commences Construction, each annual Community Benefit payment to County shall be reduced by twenty percent (20%). The Early Start Credit shall only reduce

payments for the first twenty five (25) years after accrual of Community Benefit payment.

**10.3.2.4.2** Under the lump sum payment structure, if Developer Commences Construction in any CUP prior to December 31, 2016 and construction is completed (as evidenced by a final certificate of occupancy being issued) no later than thirty (30) months following the date Developer Commences Construction, then the lump sum Community Benefit payment to County shall be reduced by twenty percent (20%).

**10.3.2.4.3** In any CUP where Construction Commences later than December 31, 2016, Developer shall not be entitled to receive an Early Start Credit for that CUP.

**10.3.2.4.4 Construction Delays.** In the event of a legal challenge to any approvals granted by the County for the Project which delays construction (through inability to obtain financing, for example), the Early Start Credit will continue to apply for a period of time, to be extended day-for-day during the pendency of the legal challenge and all appeals thereto..

**10.3.2.5** In no event shall the aggregate of all incentives and credits granted reduce the Community Benefit Payment to less than fifty percent (50%) of the amount owed on an annual or lump sum payment basis.

### **10.3.3 Additional Payment Terms for Community Benefit Payments.**

**10.3.3.1** In order to receive local hiring incentives, Developer must submit evidence of hours worked to the County with the regular payment. Each credit shall be given upon a sufficient showing of full time equivalent of 2000 hours of work ("FTE") completed. If County reviews the evidence and is not satisfied, County shall submit an additional bill to Developer for the difference.

**10.3.3.2 Late Payments.** When Developer receives a bill from the County for Community Benefit payments, payment to County shall be due within thirty (30) calendar days of Developer's receipt of that bill. Payments received by County after that thirty (30) day period shall be deemed late without further notice. Developer shall pay a late fee of five percent (5%) of the total outstanding balance due for any payment received by County beyond the due date. Said late charge shall be included with the late payment. The obligation to pay late charges shall be stayed for a maximum of thirty (30) calendar days when such amounts are disputed in good faith, so long as Developer submits the payments "Under Written Protest" with a complete explanation of the reasons for the protest. Upon resolution of the protested payment, such late charges may be assessed if it is determined by the County Executive Office in its sole discretion that the dispute was not made in good faith for any reason. Repeated protests of the same point rejected in a prior protest shall be considered a protest in bad faith. Such protest

provisions apply only to the application of credits or to late charges and not to the underlying amount of the Community Benefit or any other payment.

**10.3.3.3** In no event shall Developer be required to pay the total annual Community Benefit payment more than one time per calendar year for the same CUP area.

**10.4 Sales Tax Benefit.** Developer will require that all qualifying contractors and subcontractors exercise their option to obtain a Board of Equalization sub-permit for the jobsite and allocate all eligible use tax payments to County of Imperial. Prior to commencement of any construction activity on-site, Developer will require that the contractor or subcontractor provide the County of Imperial with either a copy of their Board of Equalization account number and sub-permit, or a statement that use tax does not apply to their portion of the Project. Regardless of whether or not the Developer receives an exclusion of applicable sales and use tax payable to the County of Imperial under Senate Bill 71 under the State Public Resource Code (Section 26003, et al.) and the California Alternative Energy and Advanced Transportation Financing Authority (CAETFA), Developer shall pay to the County and Local Transportation Authority the following:

**10.4.1 Guaranteed Amount at 250 MW Build-out.** If Developer constructs the entire 250 MW of solar capacity as identified in executed Power Purchase Agreement(s) applicable to the Property, then Developer guarantees that County will receive a minimum of \$3,017,500 under existing applicable sales and use tax laws and that Local Transportation Agency (LTA) will receive a minimum of \$1,508,750 under existing applicable sales and use tax laws.

**10.4.2. Adjusted Sales Tax Guarantee.** The County recognizes that each CUP may operate and be financially independent of other CUP's and that not all CUP's may be developed. Therefore, Developer's sales tax guarantee shall be pro-rated by CUP as follows: The guarantee set out in Section 10.4.1 shall be adjusted to be 85% of the pro-rated amount for the County and the LTA share. Commencing with the first CUP, and for each CUP thereafter, prior to the issuance of the first grading permit for the applicable CUP, the County shall determine the sales tax guarantee (both at the 85% amount and in full) to be paid for that CUP utilizing the applicable Project documents including sales tax projections and County records of sales tax receipts, Engineering, Procurement and Construction contracts and other reliable records. County shall meet with Developer to confirm that amount.

**10.4.3** In the event that Developer repowers or replaces equipment onsite, the Project site shall be designated as the "Point of Sale" as to create an additional local tax funding source for the County of Imperial.

**10.4.4** The shortfall of the CUP-based sales tax amount for the applicable CUP shall be paid as a condition of issuance of a final Certificate of Occupancy for that CUP.

**10.4.5 Reconciliation.** For a period of 18 months after the issuance of the final Certificate of Occupancy for the applicable CUP, County will monitor sales tax receipts

attributable to each CUP and the overall Project. If, after the 18-month period the total amount of sales tax the County received for that CUP exceeds that CUP's share of the CUP-based sales tax amount, then County will refund to Developer the entire amount of the Sales Tax Deposit, without interest. At the end of said 18-month period, County shall compare the total amount of sales tax receipts which have been received applicable to that CUP to the CUP-based sales tax amount. County then shall refund the Sales Tax Deposit, without interest, deducting therefrom and retaining any amount necessary to complete the CUP-based sales tax amount. In no event shall more than the Sales Tax Deposit be returned to Developer. At such time as the Sales Tax Deposit has been fully refunded, County may terminate such monitoring.

#### **10.5 Property Tax Benefit.**

10.5 Property Tax Benefit. If Developer constructs the entire 250 MW of solar capacity as identified in executed Power Purchase Agreement(s) applicable to the property, then Developer guarantees that County will receive a minimum of \$425,000 of property taxes for the first full tax year in which such 250 MW of solar capacity is in commercial operation. If less than 250 MW is constructed, the property tax guarantee will be pro-rated on a CUP-by-CUP basis. Thereafter the Developer shall pay when due the real property taxes assessed against the Project in accordance with and subject to all rights under applicable California property tax law, but there shall be no guaranteed property tax payment. For each CUP, Developer shall receive an annual credit against the Community Benefit Fee in an amount equal to 50% of the positive difference, if any, between (a) the property taxes due and payable for such CUP for such year and (b) the property taxes that were due and payable for the first property tax year after the final certificate of occupancy was issued for such CUP plus any adjustments made under California property tax law (current a 2% per year escalation).

#### **10.6 Fire/Office of Emergency Services Mitigation Payment (OES Payment).**

**10.6.1. One-Time Fee.** Developer shall pay the County \$100 per acre within each CUP as a one-time capital payment to mitigate for the use of emergency services facilities by the CUP area. This payment shall be made before issuance of the first building permit for that CUP.

**10.6.2.** During the time period of construction, Developer shall pay County an annual amount of \$50 per acre within the applicable CUP under construction. This payment may be pro-rated on a day-for-day basis and shall be paid quarterly until issuance of the final certificate of occupancy. The initial quarterly payment shall be made before issuance of the first building permit for the applicable CUP.

**10.6.3.** During the operational period, Developer shall pay County an annual amount of \$20 per acre within the applicable CUP. Payment may be pro-rated on a day-for-day basis and shall be paid quarterly during operation. The initial quarterly payment shall be made before issuance of the final certificate of occupancy for that CUP area.

**10.6.4** The payments set out here are in addition to and separate from any and all other payments under this Agreement or applicable County Codes. Payment of such fees in Section 10.6 fulfills Conditions S-11 in each CUPs.

**11. Value of Credits and Payments.** In addition to other provisions of this Agreement, all Agricultural Benefit payments, Community Benefit payment credits, and OES payments referenced in this Agreement shall escalate annually beginning on January 1, 2016 based upon the Consumer Price Index – Los Angeles SMSA – all urban consumers (“CPI”), but in no case shall the CPI be less than zero and such increases shall be applicable to County and the Developer of the CUP.

**12. Eminent Domain.** County will not participate in eminent domain to establish public access to this Project.

**13. Periodic Review.**

**13.1** County shall review the extent of good faith compliance by Developer with the terms of this Agreement at least every twelve (12) months pursuant to California Government Code section 65865.1.

**13.2** Upon written request from the County, Developer shall have the duty to demonstrate its good faith compliance with the terms of this Agreement.

**13.3** Any County failure to annually review Developer's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by County or Developer to be a breach or default of the Agreement, and shall not be used as grounds to amend, modify, alter, or terminate the Agreement.

**14. Assignment and Delegation.** As set out here, Developer may sell, transfer, or assign (collectively “assign”) all or part of Developer’s rights, title and interest in the Project. This Agreement shall be binding on all successors in interest of the Developer pursuant to County Code Section 92325.

**14.1 Partial Assignment.** When one or more CUPs is assigned, but the assignment is of less than the entire Project area, the assignment is referred to herein as a “partial” assignment. The assignment, including but not limited to any partial assignment, shall expressly include the assignment and assumption of all rights, duties, and obligations arising under or from this Agreement, other County-issued entitlements and the MMRP applicable to the CUP(s). There shall be no assignment of less than the entire CUP area and any such attempted assignment is void.

**14.2** Developer shall not without prior notification to the Imperial County Planning and Development Services Department assign, sell or transfer, or grant control of Project or any right or privilege therein granted by this permit. The Developer shall provide a minimum of thirty (30) days written notice prior to any proposed transfer becoming effective. An approved assignment agreement shall be in place for new Project owner to build and maintain as agreed to by the conditions set forth in this Agreement. The County Assessor’s Office shall be notified of any ownership change.



**14.3** Thereafter, within fifteen (15) calendar days after any such assignment, (1) Developer shall notify the County, in writing, of such assignment and shall provide County both (a) an executed copy of the assignment evidencing that the assignee expressly assumes all the assigned duties and obligations of Developer under this Agreement, other County-issued entitlements and the MMRP applicable to the CUP area; and (b) Developer's requested form of release of such duties and obligations related to that CUP area; (2) assignee shall provide County with the assignee's security equal in value to the security required of Developer by the Project entitlements including any and all entitlements required increases to secure performance of its obligations with respect to the portion of the Project assigned, including but not limited to that for the decommissioning and reclamation plan; and (3) Developer and/or assignee shall provide any and all additional information necessary to determine the sufficiency of such replacement security. As used here "security" may mean one or more security instruments which can include letters of credit, performance bonds, or other forms of security consistent with those previously accepted by the County for this or other development projects in the County.

**14.4** Within forty five (45) calendar days of delivery of such information, the County Planning and Development Services Department shall determine the sufficiency of the replacement security in its reasonable discretion, which can include letters of credit, performance bonds, or other forms of security consistent with those previously accepted by the County for this or other solar projects. The County shall have the discretion to require security having a greater value (i.e. a larger face amount) than the security being replaced related to that CUP area when such security is subject to increase pursuant to the provisions of the CUP. Notwithstanding the failure of any assignee to execute the assignment or provide the required security, the burdens of this Agreement shall be binding upon such assignee, but the benefits of this Agreement shall not inure to such assignee until and unless such assignment is executed and such security is provided and the County has delivered a written release to Developer confirming the sufficiency of the replacement security.

**14.5** Notwithstanding any sale, transfer, or assignment, Developer shall continue to be obligated under this Agreement until the County executes a release of such security. The County's unreasonable failure to approve the assignment or execute such release may be a default under Section 19 of this Agreement.

**14.6** County shall be reimbursed by Developer for any costs of review of the replacement security instrument(s).

**15. Relationship of County and Developer; No Third Party Beneficiaries.** The contractual relationship between County and Developer arising out of this Agreement does not create an agency relationship. This Agreement does not create any third-party beneficiary rights.

**16. Indemnification and Hold Harmless.**

**16.1** Developer shall indemnify and shall hold the County, its officers, agents, attorneys and employees harmless from third-party liability, claims, demands, expenses or costs, including but not limited to costs of experts and separate attorneys chosen by County at County's sole

discretion: (a) to attack, set aside, void or annul this Development Agreement, any entitlement, permit, approval or the certification of any environmental document accompanying such entitlements, or any determination made under such permits or this Development Agreement, whether there is concurrent, passive or active negligence on the part of the County, its officers, agents, attorneys or employees; (b) for personal injury (including but not limited to death), property damages, just compensation, judicial or equitable relief arising or alleged to arise from the direct or indirect operations of the Developer or its contractors, subcontractors, agents, employees, or other persons acting on Developer's behalf that relate to the Project (including but not limited to Developer's actions or failure to act in drilling, grading, construction, operation, abandonment, reclamation or decommissioning) of the Project or any CUP;

Developer shall execute County's most current form of indemnification funding agreement. County and Developer shall cooperate in the defense against claims subject to these indemnities and Developer shall enter into the applicable form of agreement to confirm such joint defense. Notwithstanding, Developer's failure to provide payment of any fees or costs under this section shall cause Developer to be in non-compliance with this Agreement. Upon notification of such non-compliance, County may, at its sole discretion, cease processing of the Project or defending any lawsuit or paying for costs associated with the Project.

**17. Amendment or Cancellation.** This Agreement may be amended or canceled by the mutual consent of County and Developer, in the manner set forth in California Government Code section 65868 and County Ordinances sections 92306.00 and 92306.01.

**18. Minor Modification.** Unless as otherwise required by law (including but not limited to County ordinances) interpretations and minor modifications or changes can be made to the Project with the mutual agreement of Developer and County and included this Agreement only in one of the following circumstances:

**18.1** Where the change is ministerial or mutually agreeable to County Executive Officer and Developer or constitutes an administrative interpretation, less than significant amendment or change or technical modification to the design, construction and/or operation of the Project under the existing applicable rules, regulations, and laws of the County and does not

**18.1.1** Alter the permitted uses of the Property as a whole or within any CUP; or,

**18.1.2** Increase the density or intensity of use of the Property as a whole or within any CUP; or,

**18.1.3** Increase the maximum height and size of permitted buildings or structures; or,

**18.1.4** Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or

**18.1.5** Conflict with a condition of approval or MMRP provision; or

**18.1.6** Constitute a discretionary approval by the County for which a subsequent or supplemental environmental impact report would be required pursuant to Section 21166 of the Public Resources Code.

**18.2** Where the change is ministerial, mutually agreeable to Developer and constitutes an administrative interpretation, less than significant amendment or change or technical modification to the design, construction and/or operation of the Project under the existing applicable rules, regulations, and laws of non-County agencies as to Project matters within their sole jurisdiction.

**19. Default.** A default under this Agreement shall be deemed to have occurred upon the happening of one or more of the following events or conditions:

**19.1** A warranty, representation, or statement made or furnished in this Agreement by either party proves to have been false in any material respect when it was made.

**19.2** A finding by County pursuant to County Ordinances sections 92308.00 and 92308.01, based on substantial evidence, that the Developer has not complied in good faith with one or more of the terms or conditions of this Agreement.

**19.3** Any other act or omission by either party which breaches or materially interferes with the terms of this Agreement.

**19.4** A default under this Agreement with respect to obligations owed to the County by the Developer shall not constitute a default under this Agreement to the extent this Agreement has been partially assigned to another entity in accordance with Article 14, and a default under this Agreement with respect to obligations owed to the County by an assignee of a portion hereof in accordance with Article 14 shall not constitute a default under this Agreement by the Developer.

**19.5** County may include in such notice of violation and subsequent process default and/or termination of the Development Agreement along with violation or revocation of the CUP, and the procedures set out in the CUP shall govern.

## **20. Procedure upon Default.**

**20.1** Upon the occurrence of default by Developer or County, prior to any proceedings pursuant to Division 23 of the County Code, and as an informal resolution procedure prior to any litigation being filed (including but not limited to any breach of contract action), the non-defaulting party shall provide the other party written notice specifying the nature of the alleged default and the actions required to cure such default. Such notice shall not be required in the event the default creates a threat to public health and safety.

**20.2** After proper notice, if the defaulting party (a) fails to take such actions or otherwise cure such default within forty-five (45) calendar days after the receipt of such notice or (b) in the event that such default cannot be cured within such forty-five (45) calendar day period but can be cured within a longer time, the defaulting party fails in such forty-five (45) day period to

commence the actions necessary to cure such default and to diligently proceed to complete such actions and cure such default, then the non-defaulting party has the option to terminate the Agreement. In the event of a monetary default (other than a dispute over a Community Benefit payment credit covered by Section 10.3.3.2), the period for cure shall be ten (10) calendar days.

**20.3** All other remedies at law or in equity which are not inconsistent with the provisions of this Agreement are available to County and Developer to pursue in the event there is a breach. The procedures set out in this Section 20 do not apply to a payment issue determined pursuant to the applicable protest procedures. Upon unsuccessful resolution of a protest, the County and Developer may proceed directly to judicial relief.

**21. Legal Action.** Either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation, or to compel specific performance. In no event shall County or its officers, employees or agents be liable in damages for any breach of this Agreement, it being expressly understood and agreed that the sole remedy available to Developer for a breach of this Agreement by County shall be a legal action in mandamus, specific performance (including the return of protested fees or other payments), injunction or declaratory relief to enforce the Agreement.

**22. Attorney's Fees.** In the event any legal action is brought to enforce or construe this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees, expert witness and consulting fees, and litigation costs.

**23. Discretion to Encumber.** This Agreement shall not prevent or limit Developer from encumbering the Property or any improvement on the Property by any mortgage, deed of trust or other security device.

**23.1** The lien of any existing or future deeds of trust recorded against all or any part of the Property shall be superior and senior to any lien created by this Agreement or the recordation thereof. At the request of any lender whose loan will be secured by a deed of trust on all or any part of the Property, County shall execute a subordination agreement subordinating its interest hereunder to the lien of such deed of trust, which subordination agreement shall be subject to the reasonable approval of County. Notwithstanding the foregoing, any foreclosure of any such deed of trust shall not serve to extinguish or terminate this Agreement. Nothing in this Agreement shall be deemed to construe, permit or authorize any such mortgagee to devote the Property, or any part thereof, for any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

**23.2** Neither entering into this Agreement nor a breach of this Agreement shall defeat, invalidate, diminish or impair the lien of any existing or future mortgage or deed of trust on the Property made in good faith and for value.

**24. Entire Agreement. Waivers and Recorded Statement.** This Agreement constitutes the entire understanding and agreement of County and Developer with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between County and Developer respecting this Agreement. Any County waivers of the provisions of this Agreement must be

authorized by the terms of this Agreement or by County ordinance and approved as set out there; any waiver by Developer shall be in writing. No waiver of any term or condition of this or any determination of a protest hereunder shall be a continuing waiver or determination hereunder. Upon the completion of performance of this Agreement or its revocation or termination, a statement evidencing completion, revocation or termination signed by the appropriate agents of County shall be recorded in the Official Records of Imperial County, California.

**25. Notices.** All notices or deliveries required or provided for by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the following:

To County:                   The County of Imperial  
                                  Attn: County Executive Officer  
                                  940 Main Street  
                                  El Centro, CA 92243

To Developer:               Wistaria Ranch Solar, LLC  
                                  Attn: Robert Ramaekers  
                                  14302 FNB Parkway  
                                  Omaha, NE 68154

County or Developer may change its address by giving notice in writing to the other party. All notices or deliveries shall be deemed to have been given when received.

**26. Captions.** The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any provision of this Agreement.

**27. Recording.** The Clerk of the Board shall cause a copy of this Agreement to be recorded with the Office of the County Recorder of Imperial County, California, within ten (10) days following the execution of this Agreement, pursuant to California Government Code section 65868.5. The Agreement shall be recorded against all APN's in all sixteen (16) CUP areas.

**28. Interpretation and Governing Law.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California.

**29. Venue.** In the event of any legal or equitable proceeding arising out of or relating to this Agreement, the parties agree that venue shall lie only in the federal or state courts located in the County of Imperial.

**30. Time of Essence.** Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

**31. Unenforceable Provisions.** The terms, conditions, and covenants of this Agreement shall be construed, whenever possible, as consistent with applicable laws and regulations. To the extent that any provision of this Agreement as so interpreted is held to violate any applicable law or regulation, the remaining provisions shall nevertheless be carried into full force and effect and remain enforceable.

**32. Representation of Capacity to Execute Contract.** Each party to this Agreement represents and warrants that the person or persons signing have the authority to execute this Agreement on behalf of the party represented by those individuals.

**33. No Waiver.** The failure of either party to enforce any term, covenant or condition of this Agreement on the date it is to be performed shall not be construed as a waiver of that party's right to enforce this or any other term, covenant or condition of this Agreement at any later date or as a waiver of any term, covenant or condition of this Agreement.

**34. Counterparts.** This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all the parties had executed the same instrument.

**35. Force Majeure.** Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations is beyond its reasonable control, such as , floods, earthquakes, acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties. Economic factors shall not be considered beyond the reasonable control of a party.

**36. Gender and Number and Interpretation.** As used herein, the neutral gender includes the masculine and feminine, the feminine gender includes the masculine, and the masculine gender includes the feminine. As used herein, the singular of any word includes the plural. In the event of an ambiguity, there shall be no presumption against the drafter all parties hereto being represented by counsel.

**37. Further Cooperation.** Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute with acknowledgment or affidavit (if reasonably required) and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. Notwithstanding the foregoing sentence, if Developer delivers the County a written request for an estoppel certificate confirming that there is no default under this Agreement, that this Agreement is in full force and effect, or that this Agreement has not been amended, then the County shall use its best efforts to respond within twenty (20) calendar days of the provision of such estoppel certificate and all necessary supporting information for such issuance.

IN WITNESS WHEREOF, the parties have notarized and executed this Development Agreement as of the Effective Date stated in this Agreement as authorized by Ordinance No. [Ordinance Number of This Development Agreement] of the Board of Supervisors of the County of Imperial.

COUNTY OF IMPERIAL

WISTARIA RANCH SOLAR, LLC

By: Ryan E. Kelley  
4816-6379-4977.1 RYAN E. KELLEY

By: Robert A. Ramaeker  
ROBERT A. RAMAEKER 20

CONTINUED ON NEXT PAGE

Its: Chair, Board of Supervisors

Its: Authorized Representative

Date: 03-02-15

Date: December 30 2014

[SIGNATURES MUST BE NOTARIZED]

Attest:

By:   
Blanca Acosta, Clerk of the Board

Date: 03-02-15

Approved As To Form:

By:   
Name: Michael Rood County Counsel

Date: 3-9-15

NOTARY ACKNOWLEDGMENTS TO BE ATTACHED

**ALL PURPOSE ACKNOWLEDGEMENT**

**STATE OF CALIFORNIA  
BOARD OF SUPERVISORS  
COUNTY OF IMPERIAL**



*The Clerk of the Board or other public officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.*

On March 2, 2015 before me, Blanca Acosta, Clerk of the Board of Supervisors personally appeared Ryan E. Kelley who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

**WITNESS my hand and official seal:**



**Blanca Acosta, Clerk of the Board  
County of Imperial, State of California**



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

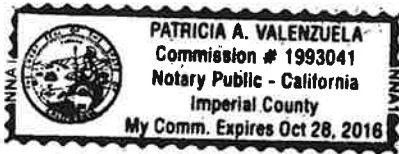
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of IMPERIAL )  
 On DECEMBER 30, 2014 before me, PATRICIA A. VALENZUELA,  
 Date Here Insert Name and Title of the Officer  
 personally appeared ROBERT A. RAMAEKERS  
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person~~s~~ whose name~~s~~ is/~~are~~  
 subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in  
 his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~s~~ on the instrument the person~~s~~  
 or the entity upon behalf of which the person~~s~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws  
 of the State of California that the foregoing paragraph  
 is true and correct.

WITNESS my hand and official seal.



Signature Patricia A. Valenzuela  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or  
 fraudulent reattachment of this form to an unintended document.

Description of Attached Document IMPERIAL COUNTY  
 Title or Type of Document: DEVELOPMENT AGREEMENT Document Date: DECEMBER 30, 2014  
 Number of Pages: 42 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: ROBERT A. RAMAEKERS  
☒ Corporate Officer — Title(s): AUTHORIZED AGENT  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

**Exhibit A  
Legal Descriptions**

**Conditional Use Permits**

**CUP 13-0036**

**052-210-025**

**Parcel 1:**

That portion of Section 14 and Section 15, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof, described as follows:

The Northeast quarter of the Northeast quarter *and* the East half of the Northwest quarter of the Northeast quarter of said Section 15.

In addition thereto, the following described property:

Beginning at the northwest corner of said Section 14, said point being Corner No. 1; thence North 87°46'42" East 72.00 feet along the north line of said Section 14 to a point on the centerline of that certain roadway locally known as Rockwood Road, said point being Corner No. 2; thence South 00°04'41" West 1,337.63 feet along said centerline to Corner No. 3 at the point of intersection with the south line of the Northwest quarter of the Northwest quarter of said Section 14; thence South 88°09'38" West 57.00 feet along said south line to Corner No. 4 at the Southwest corner of said Northwest quarter of the Northwest quarter of Section 14; thence North 00°33'50" West 1,336.73 feet along the west line of said Section 14 to the point of beginning.

(Said land is created and described as Parcel 1 in that certain Certificate of Compliance recorded February 15, 1995, as Instrument No. 95-3477, of Official Records.)

(APN: 052-210-025)

**052-210-026**

**Parcel 2:**

That portion of the Northwest quarter of Section 14, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof, described as follows:

Commencing at the northwest corner of said Section 14; thence North 87°46'42" East 72.00 feet along the north line of said Section 14 to a point on the centerline of that certain public roadway locally known as Rockwood Road, said point being Corner No. 1 and the true point of beginning of this parcel description; thence continuing along said north line of Section 14 North 87°46'42" East 2,060.98 feet to Corner No. 2 at the point of intersection with centerline of the right-of-way for the concrete lined Woodbine Canal; thence South 00°16'26" West 1,204.32 feet along said

centerline to Corner No. 3 at the beginning of a tangent 338.20 foot radius curve concave easterly; thence Southerly along said centerline curve through a central angle of 10°36'22", an arc distance of 62.61 feet to Corner No. 4 at the point of tangency; thence continuing along said right of way centerline, South 10°19'56" East 65.43 feet to Corner No. 5 at the point of intersection with the north line of the South 20 feet of the Northeast quarter of the Northwest quarter of said Section 14; thence South 88°09'38" West 844.22 feet along said north line to Corner No. 6 at the point of intersection with the west line of said Northeast quarter of the Northwest quarter of Section 14; thence South 01°17'00" East 20.00 feet along said west line to Corner No. 7 at the southwest corner of said Northeast quarter of the Northwest quarter of Section 14; thence North 88°09'38" East 847.40 feet along the south line of said Northeast quarter of the Northwest quarter of Section 14 to Corner No. 8 at the point of intersection with the centerline of the right of way for the concrete lined Woodbine Canal; thence South 10°19'56" East 69.04 feet along said right of way centerline to Corner No. 9 at the point of intersection with the centerline of a dirt field road, 17 feet in width; thence South 89°06'05" West 2,089.03 feet along said centerline, to Corner No. 10 at the point of intersection with the centerline of that certain public roadway locally known as Rockwood Road; thence North 00°04'41" East 34.00 feet along said centerline of Rockwood Road to Corner No. 11 at the point of intersection with the south line of the Northwest quarter of the Northwest quarter of said Section 14; thence continuing along said road centerline, North 00°04'41" East 1,337.63 feet to Corner No. 1 and the true point of beginning.

(Said land is created and described as Parcel 2 in that certain Certificate of Compliance recorded February 15, 1995, as Instrument No. 95-3577, of Official Records.)

(APN: 052-210-026)

**052-210-029**

That portion of the North half of Section 14, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof, described as follows:

Beginning at Corner No. 9 of Parcel 2 described in that certain Certificate of Compliance recorded February 15, 1995, as Instrument No. 95-3477, of Official Records, said point being Corner No. 1 and the true point of beginning of this description, said point also being on the centerline of the right of way for the concrete lined Woodbine Canal; thence along said centerline of said right of way, South 10°19'56" East 14.37 feet to Corner No. 2, said point also being Corner No. 5 of Parcel 6 of said Certificate of Compliance; thence South 14°03'47" East 67.40 feet along said right of way centerline, to Corner No. 3 and the beginning of a tangent 1,150.01 foot radius curve concave northeasterly, said point also being Corner No. 4 of Parcel 6 of said Certificate of Compliance; thence Southeasterly along said centerline curve through a central angle of 18°05'24" an arc distance of 363.09 feet to Corner No. 4 at the point of tangency, said point also being Corner No. 7 of Parcel 5 of said Certificate of Compliance; thence South 32°09'11" East 152.48 feet along said centerline of said right of way, to Corner No. 5 at the beginning of a tangent 1,308.02 foot radius curve concave southwesterly; thence Southeasterly along said centerline curve through a central angle of 29°38'09" an arc distance of 676.56 feet to Corner No. 6 at the point of tangency; thence South 02°31'01" East 91.47 feet along said centerline of said right of way, to Corner No. 7 at the point of intersection with the south line of the North half of said Section 14; thence South 88°31'59" West 2,578.76 feet along

said south line to Corner No. 8, said point being the West quarter corner of said Section 14; thence North 00°33'50" West 1,336.72 feet along the west line of said Section 14 to Corner No. 9, said point being the southwest corner of the North half of the North half of said Section 14; thence North 88°09'38" East 57.00 feet along the south line of said North half of the North half of Section 14 to Corner No. 10, at the point of intersection with the centerline of that certain roadway locally known as Rockwood Road, said point also being Corner No. 11 of Parcel 2 of said Certificate of Compliance; thence South 00°04'41" West 34.00 feet along said centerline of Rockwood Road to Corner No. 11 at the point of intersection with the centerline of a dirt field road, 17 feet in width, said point also being Corner No. 10 of Parcel 2 of said Certificate of Compliance; thence North 89°06'05" East 2,089.03 feet along said centerline and south line of said Parcel 2 to Corner No. 1 and the point of beginning.

(Said land is created and described as Parcel 7 in that certain Certificate of Compliance recorded February 15, 1995, as Instrument No. 95-3477 of Official Records.)

(APN: 052-210-029)

**052-210-006**

That portion of the Northwest quarter of Section 14, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof, described as follows:

Commencing at the northwest corner of said Section 14; thence North 87°46'42" East 72.00 feet along the north line of said Section 14 to a point on the centerline of that certain public roadway locally known as Rockwood Road, said point being Corner No. 1, as described in Certificate of Compliance Lot Line Adjustment No. 89, recorded February 15, 1995, as Instrument No. 95-3477 of Official Records; thence continuing along said north line of Section 14 North 87°46'42" East 2,060.98 feet to Corner No. 2 of said Certificate of Compliance Lot Line Adjustment No. 89, at the point of intersection with centerline of the right-of-way for the concrete lined Woodbine Canal; thence South 00°16'26" West 1,204.32 feet along said centerline to Corner No. 3 of said Certificate of Compliance Lot Line Adjustment No. 89, at the beginning of a tangent 338.20 foot radius curve concave easterly; thence Southerly along said centerline curve through a central angle of 10°36'22", an arc distance of 62.61 feet to Corner No. 4 of said Certificate of Compliance Lot Line Adjustment No. 89, at the point of tangency; thence continuing along said right of way centerline, South 10°19'56" East 65.43 feet to Corner No. 5 of said Certificate of Compliance Lot Line Adjustment No. 89, at the point of intersection with the north line of the South 20 feet of the Northeast quarter of the Northwest quarter of said Section 14, and the point of beginning ; thence South 88°09'38" West 844.22 feet along said north line to Corner No. 6 of said Certificate of Compliance Lot Line Adjustment No. 89, at the point of intersection with the west line of said Northeast quarter of the Northwest quarter of Section 14; thence South 01°17'00" East 20.00 feet along said west line to Corner No. 7 of said Certificate of Compliance Lot Line Adjustment No. 89, at the southwest corner of said Northeast quarter of the Northwest quarter of Section 14; thence North 88°09'38" East 847.40 feet along the south line of said Northeast quarter of the Northwest quarter of Section 14 to Corner No. 8 of said Certificate of Compliance Lot Line Adjustment No. 89, at the point of intersection with the centerline of the right of way for the concrete lined Woodbine Canal; thence North, along the centerline of said Woodbine Canal right of way, to the point of intersection with Corner No. 5 of said Certificate of Compliance Lot Line Adjustment No. 89, and the point of beginning .

APN: 052-210-006

**CUP 13-0037**

**052-180-028**

Parcel I:

That portion of the Northwest quarter of the Southwest quarter of Section 11, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the official plat thereof, *lying* Southwest of the center line of Greeson Drain.

(APN: Portion of 052-180-028)

Parcel II:

The Southwest quarter of the Southwest quarter *and* that portion of the West 500 feet of the Southeast quarter of the Southwest quarter of Section 11, Township 17 south, Range 13 east, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the official plat thereof, *lying* Southwest of the center line of the Greeson Drain.

(APN: Portion of 052-180-028)

**052-180-039**

Parcel I:

That portion of the South half of Section 11, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the official government plat thereof, *lying* north and east of Greeson Drain.

Excepting therefrom, that portion conveyed to Fred Studer, in deed recorded July 23, 1956, in Book 948, Page 403 of Official Records, described as follows:

Beginning at a point which is 105.00 feet North of the center of State Highway No. 98, as said highway was located May 16, 1956, and 70.00 feet due East of the center line of Greeson Drain, as said drain was located on May 16, 1956; thence in a Northwesterly direction 340.00 feet to a point which is 350.00 feet East of the center line of Greeson Drain; thence Easterly 1,317.25 feet to a point which is 464.27 feet North of the center line of State Highway No. 98; thence Southerly 374.27 feet to a point which is 90.00 feet North of State Highway No. 98 and 1,335.00 feet East of the center line of Greeson Drain; thence Westerly 1,265.00 feet to the point of beginning.

Also excepting therefrom, that portion reserved by Libby Dessert, in deed recorded November 28, 1984, in Book 1532, Page 1106 of Official Records, described as follows:

Beginning at the southeast corner of said Section 11, said point being the true point of beginning; thence Westerly 1, 229.50 feet along the south line of said Section 11; thence Northeasterly 2, 720.00 feet, more or less, to a point on the north line of the southeast quarter of said Section 11, said point being 1,088.00 feet Easterly of the northeast corner of the Southeast quarter; thence Easterly to the northeast corner of the Southeast quarter of said Section 11; thence Southerly 2, 695.00 feet, more or less, to the true point of beginning.  
(APN: 052-180-039)

**CUP 13-0038**  
**052-180-045**  
Parcel II:

The Southwest quarter of Section 2, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof.

Excepting therefrom, the West 25 feet *and* the South 25 feet thereof, conveyed to the County of Imperial by deed recorded December 10, 1937, in Book 475, Page 325 of Official Records.

(APN: 052-180-045)

**CUP 13-0039**  
**052-180-034**  
Parcel II:

The West half of the Southeast quarter of Section 2, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the official government plat thereof.

(APN: 052-180-034)

**052-180-054**

That portion of the East Half of the Southeast quarter of Section 2, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official plat thereof, described as follows:

Parcel 2 on Parcel Map M-1420 on file in Book 6, Page 4 of Parcel Maps in the Office of the County Recorder of Imperial County.

(APN: 052-180-054)

**CUP 13-0040**  
**052-180-015**  
Parcel III:

Lots 3 and 4 *and* the South half of the Northwest quarter of Section 2, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof.

(APN: 052-180-015)

**CUP 13-0041**

**052-180-012**

**Parcel II:**

Lots 1 and 2 *and* the South half of the Northeast quarter of Section 3, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof.

(APN: 052-180-012)

**CUP 13-0042**

**052-180-011**

**Parcel 3:**

Lots 3 and 4 in Section 3, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: Portion of 052-180-011)

**Parcel 4:**

The Southeast quarter of the Northwest quarter of Section 3, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: Portion of 052-180-011)

**052-180-002**

**Parcel I:**

The West half of the Southwest quarter of Section 3, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof.

Excepting therefrom, that portion lying South of the Greeson Drain.

(APN: 052-180-002)

**052-180-001**

The Southwest quarter of the Northwest quarter of Section 3, Township 17 South, Range 13 East, San Bernardino Base and Meridian, according to the map of the official government plat thereof.

(APN: 052-180-001)

**052-170-014**

Parcel 1:

The Southeast quarter of the Northeast quarter of Section 4, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof.

(APN: 052-170-014)

**052-440-009**

Parcel 2:

Lots 22 and 25 in Section 33, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: 052-440-009)

**CUP 13-0043**

**052-350-021**

Parcel 1:

That portion of Tract 213, being that portion of Section 34, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the Official Plat thereof, described as follows:

Beginning at the northeast corner of Lot 14, Section 34; thence running South 00°07'00" East, a distance of 1,102.20 feet to the southwest corner of Lot 22, of said Section; thence North 89°58'00" West, a distance of 17.00 feet to a point; thence South 00°22'00" West, a distance of 304.03 feet to a point; thence North 89°58'00" West, a distance of 1,220.52 feet to a point; thence North 00°07'00" East, a distance of 1,406.50 feet to a point intersecting the north boundary of Lot 12, in said Section 34; thence South 89°58'00" East, a distance of 1,238.85 feet to the point of beginning.

(APN: Portion of 052-350-021)



Parcel 2A:

That portion of Tract 213 *and* portion of Lots 30 and 32 in Section 34, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the Official Plat thereof, described as follows:

Beginning at the northwest corner of said Tract 213; thence South, on and along the west line of said Tract, 40 feet; thence East, on a line parallel with the north line of said Tract, 296.00 feet; thence South, on a line parallel with the west line of said Tract, 296.00 feet; thence West, on a line parallel with the north line of said Tract, 296.00 feet to the west line of said Tract; thence South, on and along the west line of said Tract, 2,304 feet to the southwest corner of said Tract; thence East, on and along the south line of said Tract, 260.04 feet; thence South 20.04 feet; thence East, on a line parallel with the south line of said Tract, 2,196.13 feet; thence North 00°22'00" East, 1,262.18 feet; thence West 1,220.52 feet; thence North 00°07'00" West 1,406.50 feet to the north line of said Tract; thence West, on and along the north line of said Tract, 1,238.80 feet to the northwest corner of said Tract, the point of beginning.

Excepting therefrom, the right and title to the structures, trees and major vegetation located on that portion of the property lying within the Northerly 300.00 feet of the Westerly 600.00 feet of said Tract 213, as conveyed to San Diego Gas and Electric Company, a corporation, by deed recorded September 29, 1982 in Book 1490, Page 1200 of Official Records.

(APN: Portion of 052-350-021)

Parcel 2B:

All structures, trees and major vegetation situated on:

The Northerly 300.00 feet of the Westerly 600.00 feet of Tract 213, Section 34, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof, according to the Official Plat thereof.

Excepting therefrom, that portion of Tract 213, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the Official Plat thereof, described as follows:

Commencing at the northwest corner of said Tract 213; thence South on the west line of said Tract, 40.00 feet to the point of beginning; thence East 296.00 feet; thence South 296.00 feet; thence West 296.00 feet to the west line of said Tract; thence North, on the west line of said Tract, 296.00 feet to the point of beginning.

(APN: Portion of 052-350-021)

**052-350-022**

**Parcel 3:**

That portion of Tract 213, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the Official Plat thereof, described as follows:

Commencing at the northwest corner of said Tract 213; thence South on the west line of said Tract, 40.00 feet to the point of beginning; thence East 296.00 feet; thence South 296.00 feet; thence West 296.00 feet to the west line of said Tract; thence North, on the west line of said Tract, 296.00 feet to the point of beginning.

(APN: 052-350-022)

**CUP 13-0044**

**052-440-006**

**Parcel 1:**

The South half of Tract 155, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: 052-440-006)

**CUP 13-0045**

**052-350-020**

Lot 35 in Section 34 *and* Lot 36 in Section 35, Township 16 South, Range 13 East, San Bernardino Base and Meridian, *and* that portion of Tract 293, Township 16 South, Range 13 East, San Bernardino Base and Meridian, , in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof, described as follows:

Commencing at the southeast corner of said Tract 292; thence South 89°53'00" West along said line of said Tract, 2,718.00 feet, more or less, to a point in the east bank of the irrigation canal; thence North 00°07'00" West 1,023.36 feet, more or less, to the center line of the county road marking the north boundary of the within described land; thence North 89°53'00" East along said center line of said county road, 1,625.00 feet to a point; thence North 75°29'00" East along said center line of said road, 234.00 feet to a point; thence North 42°47'00" East along center line of said road, 951.00 feet, more or less, to the line of the tract of land conveyed by I. W. Van Dorin and Henrietta Van Dorin to Herbert Potter and Lettie Potter, by deed dated May 20, 2008, recorded in Book 39, Page 33 of Deeds; thence South 66°05'00" East along center line of said county road

and along said line of said Potter's land to a point in east line of said Tract 293, which point is also the southeast corner of the land conveyed as above to said Potter; thence South 00°07'00" East, along said east line of said Tract to the point of beginning.

(APN: 052-350-020)

**CUP 13-0046**

**052-350-001**

Parcel 2:

Tract 212, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: 052-350-001)

**052-350-001, 052-350-002, 052-350-004**

Parcel 3:

That portion of Tracts 97 and 293, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof, described as follows:

Parcels A, B, C and D of that certain survey on file in Book 10, Page 6 of Licensed Survey Maps, records of Imperial County.

(APN: 052-350-001; -002 and -004)

**052-350-003**

Those portions of Tracts 97 and 293, Township 16 South, Range 13 East, San Bernardino Base and Meridian, included within the following described boundaries:

Beginning at a point in the north line of the county road which is North 89°59'00" West, 279.30 feet and South 36°43'00" East, 341.50 feet from the southeast corner of said Tract 97, said point of beginning being the southeast corner of Parcel C as shown on a Licensed Survey Map on file in Book 10, Page 6; thence North 36°43'00" West, 1,286.90 feet; thence North 26°56'16" West, 387.87 feet; thence South 89°59'00" East, 401.75 feet; thence South 49°13'30" East, 594.21 feet to the northeast corner of Parcel B as shown on said Survey Map; thence South 49°33'00" West, 242.80 feet; thence South 38°01'00" East, 1,023.70 feet to the north line of the county road; thence Westerly along the county road to the point of beginning.

(APN: 052-350-003)

**CUP 13-0048**

**052-440-005**

The East 2,655.00 feet of Tract 154, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in the unincorporated area of the County of Imperial, State of California, according to the Official Plat thereof.

(APN: 052-440-005)

**CUP 13-0049**

**052-440-003**

Parcel II:

The West 60 feet of Tract 154, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof, *lying* North of the Imperial Irrigation District Drainage Canal as located July 25, 1936.

(APN: 052-440-003)

**052-440-004**

Parcel I:

The North 20 feet of the West 2,625 feet of Tract 154, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: Portion of 052-440-004)

Parcel III:

The West 2,625 feet of Tract 154, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

Excepting therefrom, the North 20 feet thereof.

Also excepting therefrom, the West 60 feet thereof *lying* North of the Imperial Irrigation District Drainage Canal as located July 25, 1936.

(APN: Portion of 052-440-004)

**CUP 13-0050**

**052-210-019**

The North half of the Northwest quarter *and* the Southeast quarter of the Northwest quarter of Section 23, Township 17 South, Range 13 East, San Bernardino Base and Meridian, County of Imperial, State of California, according to the Official Plat thereof.

Excepting therefrom, that portion, if any, lying within the right of way of the All American Canal, as now located.

(APN: 052-210-019)

**CUP 13-0051**  
**052-210-020**

That portion of sections 23 & 24, T.17 S., R.13 E., S.B.M., in an unincorporated area of the county of Imperial, state of California, described as follows:

Beginning at the north quarter corner of section 23; thence north 88°55'36" east, along the north line of said section 23, a distance of 2674.74 feet to the northeast corner of said section 23; thence south 89°02'25" east, along the north line of section 24, a distance of 1374.06 feet; thence south 00°08'12" west a distance of 2339.82 feet to a point on the north line of the All American Canal right of way; thence south 84°37'40" west, along said north right of way line of All American Canal, a distance of 1344.67 feet to a point on the east line of the northeast quarter of said section 23; thence south 84°37'10" east, along said north right of way line of All American Canal, a distance of 2705.80 feet to a point on the west line of said northeast quarter of section 23; thence north 00°12'40" west a distance of 2692.36 feet to the point of beginning;

The above described area containing 234.88 acres more or less.

(APN: Portion of 052-210-020)

**CUP 13-0052**  
**052-210-020**

That portion of section 24, T.17 S., R.13 E., S.B.M., in an unincorporated area of the county of imperial, state of California, described as follows:

Beginning at the northwest corner of said section 24; thence south 89°02'25" east along the north line of section 24 a distance of 1374.06 feet to the true point of beginning; thence south 00°08'12" west a distance of 2339.82 feet to a point on the north line of the All American Canal right of way which bears north 84°37'40" east, along said north right of way line of All American Canal, at a distance of 1344.67 feet from a point on the east line of the northeast quarter of section 23; thence north 84°37'40" east, along said north right of way line of All American Canal, a distance of 1334.75 feet to a point on the west line of the northeast quarter of said section 24; thence continuing north 84°37'40" east, along said north right of way line of All American Canal, a distance of 2681.28 feet to a point on the east line of said northeast quarter of said section 24; north 00°22'48" west a distance of 1897.16 feet to the northeast corner of said section 24; thence north 89°02'25" west a distance of 2677.42 feet to the north quarter corner of said section 24; thence north 89°02'25" west, along said north line of section 24, a distance of 1303.36 feet to the true point of beginning;

The above described area containing 194.03 acres more or less.

(APN: Portion of 052-210-020)

### **Legal Descriptions of Collector Line Corridors**

#### **Land Calexico, LLC**

An easement 100 feet wide and running from the North to South along and inside the entire length of the western boundary line of APN 052-180-048.

**THAT PORTION OF SECTION 11, T.17S., R.13E., SBM, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:**

**BEGINNING:** AT THE NORTH 1/4 CORNER OF SECTION 11, T.17S., R13E.; THENCE SOUTH 89°15'24" EAST ALONG THE NORTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 11, A DISTANCE OF 100.20 FEET TO A POINT ON A LINE LYING 100 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE SAID NORTHEAST 1/4 OF SECTION 11; THENCE SOUTH 02°51'45" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 2767.31 FEET TO A POINT ON THE SOUTH LINE OF SAID NORTHEAST 1/4 OF SECTION 11; THENCE SOUTH 88°54'02" WEST ALONG THE SAID LAST SOUTH LINE, A DISTANCE OF 100.05 FEET TO THE CENTER CORNER OF SAID SECTION 11; THENCE NORTH 02°51'45" WEST A DISTANCE OF 2770.54 FEET TO THE NORTH 1/4 CORNER OF SECTION 11 AND THE **POINT OF BEGINNING.**

**THE ABOVE DESCRIBED AREA CONTAINING 6.35 ACRES MORE OR LESS.**



05-16-2014

**Brandenberg**

An easement 75 feet wide and running from the North to South along and inside the entire length of the western boundary line of APN 052-210-015



**THAT PORTION OF SECTION 14, T.17S., R.13E., SBM, IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:**

**BEGINNING:** AT THE WEST 1/4 CORNER OF SECTION 14, T.17S., R.13E.; THENCE NORTH 88°12'18" EAST ALONG THE NORTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 14, A DISTANCE OF 162.38 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING NORTH 88°12'18" EAST ALONG SAID NORTH LINE OF THE SOUTHWEST 1/4 OF SECTION 14, A DISTANCE OF 75.02 FEET; THENCE SOUTH 00°14'20" EAST A DISTANCE OF 1359.55 FEET; THENCE SOUTH 18°09'22" WEST A DISTANCE OF 215.48 FEET; THENCE SOUTH 00°14'20" EAST A DISTANCE OF 1113.64 FEET TO A POINT ON THE SOUTH LINE OF SECTION 14; THENCE SOUTH 88°55'13" WEST ALONG SAID LAST SOUTH LINE, A DISTANCE OF 75.01 FEET; THENCE NORTH 00°14'20" WEST A DISTANCE OF 1126.88 FEET; THENCE NORTH 18°09'22" EAST A DISTANCE OF 215.48 FEET; THENCE NORTH 00°14'20" WEST A DISTANCE OF 1345.37 FEET TO THE **TRUE POINT OF BEGINNING**.

**THE ABOVE DESCRIBED AREA CONTAINING 4.63 ACRES MORE OR LESS.**



## **Legal Descriptions of Gentie Line Corridor**

### **BOUNDARIES OF EASEMENT AREA**

#### **Parcel 1 - Eastern Portion:**

##### **POR. OF APN 052-190-037 & APN 052-190-022**

A parcel of land located in the Southeast Quarter of Section 17 and the Northeast Quarter of Section 20, Township 17 South, Range 13 East of the San Bernardino Base and Meridian, Imperial County, California, more particularly described as follows:

Commencing at the Southeast corner of said Section 17, from which the East Quarter of said Section 17, bears N 00° 19' 54" W, a distance of 2718.16 feet;

**THENCE** along the East line of said Section 17, N 00° 19' 54" W, a distance of 75.00 feet to the **POINT OF BEGINNING**;

**THENCE** leaving said East line, S 89° 40' 53" W, Parallel with the South line of said Section 17, a distance of 1758.31 feet;

**THENCE** S 00° 01' 28" W, a distance of 75.00 feet to the South line of said Section 17, from which the Southeast corner of said Section 17 bears N 89° 40' 53" E, a distance of 1758.78 feet ;

**THENCE** continuing S 00° 01' 28" W, entering said Section 20, a distance of 180.50 feet;

**THENCE** N 89° 58' 32" W, a distance of 250.20 feet;

**THENCE** N 00° 01' 28" E, a distance of 29.00 feet;

**THENCE** S 89° 40' 53" W, a distance of 85.51 feet;

**THENCE** N 39° 05' 51" E, a distance of 194.16 feet to the North line of said Section 20, from which the North Quarter corner of said Section 20 bears S 89° 40' 53" W, a distance of 761.98 feet;

**THENCE** continuing N 39° 05' 51" E, entering said Section 17, a distance of 197.40 feet;

**THENCE** N 89° 40' 53" E, a distance of 1846.74 feet to the East line of said Section 17;

**THENCE** along said East line, S 00° 19' 54" E, a distance of 77.50 feet to the **POINT OF BEGINNING**.

Containing 207,918 sq. ft. (4.77 Ac.) ±.

**Parcel 2 - Western Portion:**

**INTENTIONALLY DELETED**

**Parcel 3 – Switchyard Easement Area**

**POR. OF APN 052-190-022**

**THAT STRIP OF LAND LYING WITHIN THE NORTHEAST QUARTER OF SECTION 20, T.17 S., R.13 E., S.B.M., IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:**

**BEGINNING:** AT THE SOUTHWEST CORNER OF SECTION 16; THENCE SOUTH 89°39'25" WEST ALONG THE NORTH LINE OF SAID SECTION 20, A DISTANCE OF 1758.74 FEET; THENCE SOUTH A DISTANCE OF 180.50 FEET; THENCE WEST A DISTANCE OF 63.19 FEET TO **THE TRUE POINT OF BEGINNING**; THENCE WEST A DISTANCE OF 177.00 FEET; THENCE SOUTH A DISTANCE OF 107.44 FEET; THENCE EAST A DISTANCE OF 177.00 FEET; THENCE NORTH A DISTANCE OF 107.44 FEET TO **THE TRUE POINT OF BEGINNING**;

**THE ABOVE DESCRIBED STRIP OF LAND CONTAINING 0.436 ACRES MORE OR LESS.**

**Parcel 4 - "Alternate Western Portion:"**

**INTENTIONALLY DELETED**

#### **4. Intentionally Deleted**

#### **5. Calexico West APN 052-190-012 Co-Tenancy Easement**

##### **BOUNDARIES OF EASEMENT AREA**

##### **PORTION OF APN 052-190-012**

A parcel of land located in the Southwest Quarter of Section 16, Township 17 South, Range 13 East of the San Bernardino Base and Meridian, Imperial County, California, more particularly described as follows:

Commencing at the Center Quarter of said Section 16, from which the South Quarter corner of said Section 16, bears S 00° 21' 08" E, a distance of 2693.70 feet;

**THENCE** along the East line of the Southwest Quarter of said Section 16, S 00° 21' 08" E, a distance of 80.00 feet to the **POINT OF BEGINNING**;

**THENCE** continuing along said East line, S 00° 21' 08" E, a distance of 100.00 feet;

**THENCE** leaving said East line, N 89° 57' 34" W, a distance of 2592.95 feet;

**THENCE** S 00° 19' 54" E, a distance of 2462.35 feet;

**THENCE** S 89° 40' 53" W, a distance of 130.00 feet to the West line of said Southwest Quarter;

**THENCE** along said West line, N 00° 19' 54" W, a distance of 77.50 feet;

**THENCE** leaving said West line, N 89° 40' 53" E, a distance of 30.00 feet;

**THENCE** N 00° 19' 54" W, a distance of 2485.48 feet;

**THENCE** S 89° 57' 34" E, a distance of 2692.92 feet to the East line of said Southwest Quarter and the **POINT OF BEGINNING**.

Containing 517,902 sq. ft. (11.89 Ac.) ±.

#### **6. G. Bishop APN 052-190-011 Co-Tenancy Easement**

## **BOUNDARIES OF EASEMENT AREA**

### **PORTION OF APN 052-190-011**

A parcel of land located in the Southeast Quarter of Section 16, Township 17 South, Range 13 East of the San Bernardino Base and Meridian, Imperial County, California, more particularly described as follows:

Beginning at the Center quarter of said Section 16, from which the East quarter corner of said Section 16, bears S 89° 57' 34" E, a distance of 2,722.90 feet; thence along the north line of the Southeast quarter of said Section 16, S 89° 57' 34" E, a distance of 2,722.90 feet to the East quarter corner of said Section 16; thence along the east line of the Southeast quarter of said Section 16, S 00° 23' 47" E, a distance of 155.00 feet; thence leaving said east line, S 89° 18' 14" W, a distance of 2,723.01 feet to the west line of the Southeast quarter of said Section 16; thence along said west line, N 00° 21' 08" W, a distance of 190.00 feet to the point of beginning.

Containing 469,706 sq. ft. (10.78 Ac.) ±.

**7. Calexico West APN 052-210-016 Co- Tenancy Easement**

**BOUNDARIES OF EASEMENT AREA**

**PORTION OF APN 052-210-016**

A parcel of land located in the South half of Section 15, Township 17 South, Range 13 East of the San Bernardino Base and Meridian, Imperial County, California, more particularly described as follows:

Commencing at the West Quarter corner of said Section 15, from which the Southwest corner of said Section 15, bears S 00° 23' 47" E, a distance of 2676.13 feet;

**THENCE** along the West line of the Southwest Quarter of said Section 15, S 00° 23' 47" E, a distance of 45.00 feet to the **POINT OF BEGINNING**;

**THENCE** leaving said West line, N 89° 35' 46" E, a distance of 5463.87 feet to the East line of the Southeast Quarter of said Section 15;

**THENCE** along said East line, S 00° 53' 33" E, a distance of 100.00 feet;

**THENCE** leaving said East line, S 89° 35' 46" W, a distance of 5464.73 feet to the West line of said Southwest Quarter;

**THENCE** along said West line, N 00° 23' 47" W, a distance of 100.00 feet to the **POINT OF BEGINNING**.

Containing 546,430 sq. ft. (12.54 Ac.) ±.

**8. R. Brandenburg/C. Seitz APN 052-210-015 Co-Tenancy Easement**

**BOUNDARIES OF EASEMENT AREA**

**PORTION OF APN 052-210-015**

A parcel of land located in the Southwest Quarter of Section 14, Township 17 South, Range 13 East of the San Bernardino Base and Meridian, Imperial County, California, more particularly described as follows:

Commencing at the West quarter corner of said Section 14, from which the Center quarter of said Section 14, bears N 88° 12' 17" E, a distance of 2,607.50 feet; thence along the west line of the Southwest quarter of said Section 14, S 00° 53' 33" E, a distance of 45.00 feet to the point of beginning; thence leaving said west line, N 89° 06' 45" E, a distance of 2,609.33 feet to the east line of said Southwest quarter; thence along said east line, S 02° 19' 24" E, a distance of 110.03 feet; thence leaving said east line, S 89° 06' 45" W, a distance of 2,612.08 feet to said west line; thence along said west line, N 00° 53' 33" W, a distance of 110.00 feet to the point of beginning.

Containing 287,178 sq. ft. (6.59 Ac.) ±.

**PORTION OF APN 052-210-015**

**Parcel 2:**

**INTENTIONALLY DELETED**

**ATTACHMENT “F”**  
**PC ORIGINAL PACKAGE**



# PROJECT REPORT

TO: **PLANNING COMMISSION**

AGENDA DATE: March 12, 2025

FROM: **PLANNING & DEVELOPMENT SERVICES DEPT.** AGENDA TIME 9:00 PM/No.3

Time Extension #24-0004 Amendment to  
PROJECT TYPE: the Wistaria Ranch Solar Development Agreement SUPERVISOR DIST # 2

LOCATION: approx. 5 miles west of Calexico along Highway 98 APN: 052-180-045, et al

Calexico, CA 92231

PARCEL SIZE: 1,685 acres +/-

GENERAL PLAN (existing) Agriculture GENERAL PLAN (proposed) N/A

ZONE (existing) A-2 (Medium Agriculture) & A-3 (Heavy Agriculture) ZONE (proposed) N/A

GENERAL PLAN FINDINGS ☒ CONSISTENT ☐ INCONSISTENT ☐ MAY BE/FINDINGS

PLANNING COMMISSION DECISION:

HEARING DATE: 03/12/2025

☐ APPROVED

☐ DENIED

☐ OTHER

PLANNING DIRECTORS DECISION:

HEARING DATE: \_\_\_\_\_

☐ APPROVED

☐ DENIED

☐ OTHER

ENVIROMENTAL EVALUATION COMMITTEE DECISION:

HEARING DATE: \_\_\_\_\_

INITIAL STUDY: EIR

☐ NEGATIVE DECLARATION ☐ MITIGATED NEG. DECLARATION ☒ EIR

DEPARTMENTAL REPORTS / APPROVALS:

PUBLIC WORKS

☐ NONE

☐ ATTACHED

AG / APCD

☐ NONE

☐ ATTACHED

E.H.S.

☐ NONE

☐ ATTACHED

FIRE / OES

☐ NONE

☐ ATTACHED

OTHER

## REQUESTED ACTION:

It is recommended that the Planning Commission conduct a public hearing to hear all the opponents and proponents of the proposed project. Staff would then recommend that the Planning Commission make a recommendation to the Board of Supervisors to approve of the Wisteria Ranch Solar, LLC Development Agreement (DA) time extension and amendment by taking the following actions:

1. Make the Findings that the Final EIR (SCH #2013091084), for the Wisteria Ranch Solar project was certified by the Board of Supervisors on December 30, 2014, and no further environmental documentation is necessary for the Time Extension and Amendment to the Imperial County Development Agreement concerning the Wisteria Ranch Solar project.
2. Approve the Resolution and Findings for the DA Amendment and Time Extension to the Imperial County Development Agreement concerning Wisteria Ranch Solar, LLC, as amended.

**STAFF REPORT**  
**PLANNING COMMISSION**

**March 12, 2025**

**Time Extension #24-0004 for an Amendment to the  
CED Wistaria Solar Development Agreement  
(formally known as Wistaria Solar Ranch)**

**Applicant:** CED Wistaria Solar 2, LLC

**Project Location:**

The previously entitled Wistaria Solar Ranch, is a photovoltaic (PV) energy generation project on portions of approximately 2,661.11 acres. The solar field site parcels are approximately six miles southwest of the City of El Centro, California and five miles directly west of Calexico, California. The Project area is generally bounded by Wahl Road on the north, Brockman and Rockwood Roads on the west, the U.S./Mexico border on the south, and Ferrell and Corda Roads on the east. The geographic center of the solar field site parcels and Electric Collector Line Corridor roughly corresponds with 32° 41' 48" North and 115° 37' 00" West, at an elevation of 13 feet below sea level. The Gen-Tie component of the Project generally starts to the east of Rockwood Road, north of Anza Road and extends due west to Pulliam Road then aligns south.

**Project Summary:**

The previously entitled Wistaria Solar Ranch is the construction, operation and reclamation of up to sixteen (16) separate solar energy projects using conventional PV modules (either crystalline or thin-film) or concentrated photovoltaic (CPV) modules. The system operates only when the sun is shining during daylight hours. The ultimate energy output is dependent on several variables, including off-take arrangements and the evolving efficiency of PV panels. As a result, the project could generate 250 MW.

On November 16, 2023, the Planning & Development Services Department received notification from the applicant, CED Wistaria Solar 2, LLC, requesting that the County of Imperial amend the current Development Agreement approved by the Board of Supervisors on December 30, 2014. The applicant requested extending the time to commence development of the project for an additional ten (10) years. The newly proposed amendment will update performance milestones, time limits and allow for the development of the eleven (11) remaining solar projects, i.e. Conditional Use Permits.

**Development Agreement:**

The current project is the subject of this Agreement as described in the Final EIR certified by the Board of Supervisors. As five (5) solar projects have been built, the project currently consists of 11 solar projects, Conditional Use Permits #13-0038, through #13-0046, 13-0048, and 13-0049; and 11 Variances #13-0004, through 13-0012, 13-0014 and 13-0015, and related improvements as more fully described in section 5 of this Agreement.

**Environmental Analysis:**

The Final Wistaria Ranch Solar Energy Project EIR (SCH #2013091084), a Mitigation, Monitoring and Reporting Program, and Candidate CEQA Findings has been prepared and approved by the Board of Supervisors on December 30, 2014, in accordance with the requirements of the California Environmental Quality Act, the State CEQA Guidelines, and the County's Rules to Implement CEQA, as amended.

**STAFF RECOMENDATION:**

Staff recommend the Planning Commission and hold a public hearing and hear all proponents and opponents of the proposed project; staff would then recommend that the Planning Commission consider the following action:

1. Find that the Final EIR (SCH #2013091084) for the CED Wistaria Solar Project was certified by the Board of Supervisors on December 30, 2014, and that no further environmental documentation is necessary for this time extension and amendments to the Imperial County Development Agreement concerning CED Wistaria Solar.
2. Approved Resolution recommending that the Board of Supervisors adopt Ordinance \_\_\_\_\_ for the proposed amendments including time extension to the Imperial County Development Agreement concerning CED Wistaria Solar project.

**REPAIRED BY:**

David Black  
Planning & Development Services

*For Michael Black*

**REVIEWED BY:**

Michael Abraham, AICP, Assistant Director  
Planning & Development Services

*Michael Abraham*

**APPROVED BY:**

Jim Minnick, Director  
Planning & Development Services

*For Michael Black*

**ATTACHMENTS:**

- A. Location Map
- B. Resolution DA
- C. Development Agreement draft
- D. Development Agreement Extension request
- E. CEO's letter

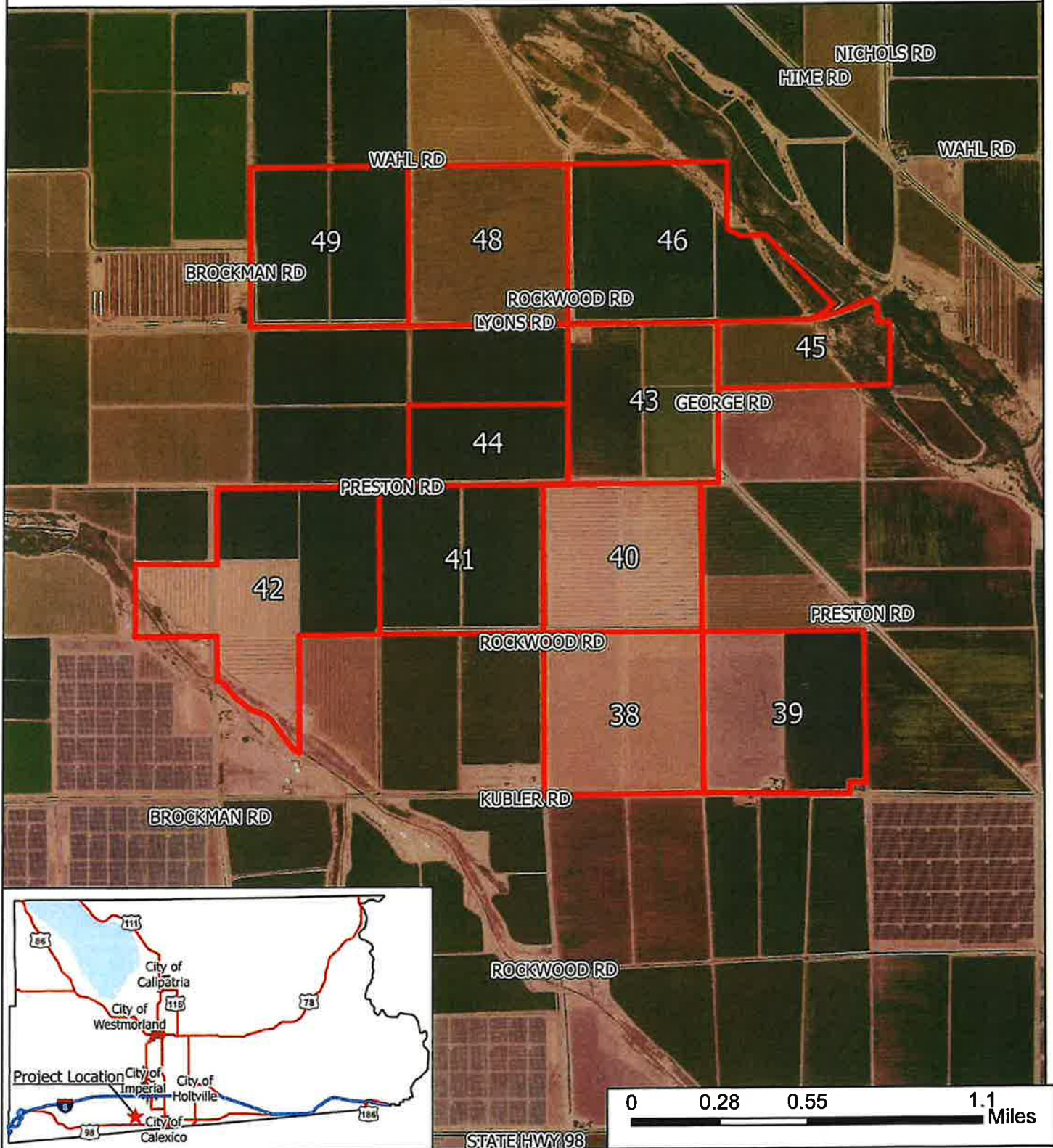
S:\AllUsers\APN\052\180\045\EXT24-0004\DA 2 24 2025\EXT24-0004staff report.doc

# **Attachment A**

## **Location Map**



# PROJECT LOCATION MAP



**WISTARIA 2 DA  
TIME EXTENSION 24-0004  
APN 052-180-045-000 ET AL.**

— Centerline  
 Wisteria 2



PC ORIGINAL PACKET

**Attachment B**  
**DA Resolution**

**RESOLUTION NO.**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF IMPERIAL, CALIFORNIA, RECOMMENDATION FOR APPROVAL TO THE BOARD OF SUPERVISOR FOR THE TIME EXTENSION #24-0004 AMENDIND THE DEVELOPMENT AGREEMENT FOR THE CED WISTARIA SOLAR PROJECT.**

**WHEREAS**, a Final Project EIR SCH #2013091084, a Mitigation Monitoring and Reporting Program and Candidate CEQA Findings have been prepared in accordance with the requirements of the California Environmental Quality Act, the State CEQA Guidelines, and the County's Rules to Implement CEQA as amended; and

**WHEREAS**, the Planning Commission of the County of Imperial has been delegated with the responsibility of making recommendations to the Imperial County Board of Supervisors for approval and certification; and

**WHEREAS**, public notice of said application has been given, and the Planning Commission has considered evidence presented by the Imperial County Planning & Development Services Department and other interested parties at a public hearing held with respect to this item on March 12, 2025.

**NOW THEREFORE**, the Planning Commission of the County of Imperial **DOES HEREBY RESOLVE** as follows:

**SECTION 1.** The Planning Commission has reviewed the time extension and amendments for the Development Agreement for the CED Wistaria Solar Project prior to making a decision to recommend that the Board of Supervisors to approve the proposed Development Agreement as amended; The Planning Commission finds and determines that the Development Agreement is adequate and prepared in accordance with the requirements of the Imperial County General Plan and Land Use Ordinance and the California Environmental Quality Act (CEQA) which analyzes environmental effects, based upon the following findings and determinations.

**SECTION 2.** That in accordance with State Planning and Zoning law and the County of Imperial the following findings for the approval of the Development Agreement for the CED Wistaria Solar Project have been made as follows:

**A. Is project consistent with the objectives, polices, general land uses and programs specified in the general plan and any applicable specific plan?**

The design and improvements and amendments proposed are consistent overall with the Imperial County General Plan. The proposed solar development together with the provision for its design and improvements is consistent with the policies, goals, objectives, general land uses, and programs specified in the General Plan. The CED Wistaria Solar Project EIR includes a discussion of the proposed



**PLANNING COMMISSION RESOLUTION FOR  
CED WISTARIA SOLAR DEVELOPMENT AGREEMENT**

**Page 2 of 8**

project's consistency with the General Plan under the discussion and analysis of Impact 4.2.1. C, which concludes that the proposed project would not conflict overall with the policies of the County's General Plan. The General Plan designates the subject site as "Agriculture." Sections 90508.02 & 90509.02 of the County Land Use Ordinance identify the permitted and conditional uses within the A-2 & A-3 zoning designations. Uses identified as conditionally permitted require a Conditional Use Permit (CUP), which is subject to the discretionary approval of the County Board of Supervisors (Board) per a recommendation by the County Planning Commission. The projects include several uses identified as conditionally permitted within the A-2 & A-3 zones.

The current development that is the subject of this Agreement consists of the project as described in the Final EIR certified by the Board of Supervisors. As five (5) solar projects have been built, the project currently consists of 11 solar projects, Conditional Use Permits #13-0038, through 13-0046, 13-0048, and 13-0049; and 11 Variances #13-0004, through 13-0012, 13-0014 and 13-0015, and related improvements as more fully described in section 5 of this Agreement ("Project").

The Planning Commission has also examined the relevant, applicable portions of the Imperial County General Plan's Land Use Element and the Geothermal/Alternative Energy & Transmission Element and has determined that the Land Use Element's statement that "geothermal, hydroelectric, wind and solar facilities may be regulated differently than other types of power plants by implementing zoning" demonstrates that the proper regulating process for solar facilities is the County's Zoning Ordinance. General Plan, Land Use. Elem., p. 46. The General Plan provides that the evaluation and approval of non-agricultural uses on lands designated agriculture will occur through the implementation of zoning and the conditional use permit (CUP) review process. Further, the Land Use Compatibility Matrix in the ICGP provides that industrial uses are permissible on lands zones A-2 & A-3 with a CUP. General Plan, Land Use Elem., Table 4. C.

Additionally, the Geothermal/Alternative Energy Element's conclusion that "with the gradual construction of geothermal/alternative energy plants, overall agricultural production levels should not be adversely affected" through careful, site-specific planning and mitigation reflects the County's intent to allow alternative energy plants such as solar facilities on agriculturally designated lands subject to a case-by-case process as allowed under the zoning code. Therefore, pursuant to Land Use Ordinance, Section 90508.02, solar is permitted with approval of a Conditional Use Permit for "Solar Power Plants."

Moreover, the Agricultural Element and Land Use Element contains no express prohibition of non-agricultural uses on land designated within the Agricultural category. Rather, the Agricultural Element specifically allows non-agricultural

**PLANNING COMMISSION RESOLUTION FOR  
CED WISTARIA SOLAR DEVELOPMENT AGREEMENT**

Page 3 of 8

development on land within the Agricultural Category. According to the Land Use Element, Agriculture is the principal and dominant use, but it expressly allows non-agricultural uses on agricultural land and places an appropriate burden on those proposing a non-agricultural use to demonstrate that (1) it “does not conflict with agricultural operations and will not result in the premature elimination of such agricultural operations” and (2) it meets the requirement that “no use should be permitted which would have a significant adverse effect on agricultural production.” (General Plan Land Use Elem. IV.C.1.)

The County finds that the evidence in the record demonstrates that the Project does not conflict with any existing agricultural operations and will not result in the premature elimination of agricultural operations. While the Project will cause the project site to be unavailable for agricultural production during construction, operation, maintenance, and decommissioning of the Project, this temporary loss is mitigated to less than significant by the mitigation measures identified in the EIR, which ensure that opportunities for active agriculture production in the County will continue to be available, supported, and promoted. The affected agricultural land will remain within the Agricultural land use category. Further, the Project applicant will be required to submit to Imperial County a site-specific reclamation plan capable of restoring the site back to current agricultural conditions, which will further ensure availability of the land for future agricultural production.

The County further finds that the Project does not have a significant adverse effect on agricultural production. “Significant adverse effect on agricultural production” means a significant unmitigated impact, as defined under CEQA, to agricultural resources resulting from the permanent elimination of agricultural uses or resulting from removal agricultural land from the Agricultural land use category. To the extent the Project will prevent the use of the Project sites from being used for agricultural production during construction, operations, and decommissioning activities, the EIR has identified mitigation measures which will limit the Project’s effect on agricultural production. These measures include options to:

- Acquire an agricultural conservation easement on a 1:1 (non-prime farmland) or 2:1 (prime farmland) ratio of impacted acres, thus ensuring the availability of an equal amount of agricultural land for production;
- Pay of an in-lieu mitigation fee to be used by the County’s Agriculture Commissioner to promote active agriculture production;
- Enter into a voluntary Development Agreement or Public Benefit Agreement that will include, among other things, payment of a fee no less than the in lieu mitigation fee contemplated above.

**PLANNING COMMISSION RESOLUTION FOR  
CED WISTARIA SOLAR DEVELOPMENT AGREEMENT**

Page 4 of 8

Thus, while the Project will cause the Project sites to be unavailable for agricultural production during construction, operation, maintenance, and decommissioning of the Project, this temporary loss is mitigated to less than significant by the mitigation measures, which ensure that opportunities for active agriculture production in the County will continue be available, supported, and promoted. Further, County policy requires preparation and implementation of an agriculture reclamation plan that will return the site to agriculture production capability at the end of the proposed operational life.

Furthermore, the purpose of the project is for the construction of a PV solar facility. Pursuant to Title 9, Division 5, Chapter 8, "Solar energy electrical generator," "Electrical power generating plant," "Major facilities relating to the generation and transmission of electrical energy," and "Resource extraction and energy development," are uses that are permitted in the A-2, zones subject to approval of a CUP from the County. The Project site is zoned A-2. The purpose of these zones is to designate areas that are suitable for agriculture uses, as well as areas that support other compatible uses consistent with the identified permitting requirements. Solar energy facilities are permitted with a conditional use permit in A-2 zone (Imperial County Code § 90508.02). Therefore, the proposed use is consistent with the purpose of the zone or sub-zone within which the use will be located.

The Project complies with the minimum requirements of this Title by, among other things, obtaining a CUP, complying with the California Environmental Quality Act, and participating in the public review and hearing process. Development standards have been established for the Project pursuant to these processes and will be enforced via imposition and enforcement of the Mitigation Monitoring and Reporting Program recommended for approval by separate Resolution, as well as the conditions of approval imposed on this CUP. The Conditions of Approval will further ensure that the project complies with all applicable regulations of the County of Imperial and the State of California. Therefore, the proposed project will meet the minimum requirements of the Land Use Ordinance, Section 90203.00.

**B. Is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is or will be located.**

The purpose of the project is for the construction of a PV solar facility. Pursuant to Title 9, Division 5, Chapter 8, "Solar energy electrical generator," "Electrical power generating plant," "Major facilities relating to the generation and transmission of electrical energy," and "Resource extraction and energy

**PLANNING COMMISSION RESOLUTION FOR  
CED WISTARIA SOLAR DEVELOPMENT AGREEMENT**

Page 5 of 8

development,” are uses that are permitted in the A-2, zones subject to approval of a CUP from the County. The Project site is zoned A-2. The purpose of these zones is to designate areas that are suitable for agriculture uses, as well as areas that support other compatible uses consistent with the identified permitting requirements. Solar energy facilities are permitted with a conditional use permit in A-2 zone (Imperial County Code § 90508.02).

Furthermore, the proposed use meets the minimum requirements of this Title applicable to the use and complies with all applicable laws, ordinances and regulations of the County of Imperial and the State of California. (Imperial County Code § 90203.09.D). The Project complies with the minimum requirements of this Title by, among other things, obtaining a CUP, complying with the California Environmental Quality Act, and participating in the public review and hearing process. Development standards have been established for the Project pursuant to these processes and will be enforced via imposition and enforcement of the Mitigation Monitoring and Reporting Program recommended for approval by separate Resolution, as well as the conditions of approval imposed on this CUP. The Conditions of Approval will ensure that the project complies with all applicable regulations of the County of Imperial and the State of California. Therefore, the proposed project will meet the minimum requirements of the Land Use Ordinance, Section 90203.00.

Therefore, the proposed use is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is located

**C. Is in conformity with and will promote public convenience, general welfare and good land use practice.**

The proposed project is also consistent with the County's goal of becoming a major source of renewable energy for California and fulfill its mission to help California meet its statutory and regulatory goal of increasing renewable power generation, including greenhouse gas reduction goals of Assembly Bill (AB) 832 (California Global Warming Solutions Act of 2006). Imperial County is a major source of renewable energy for the State of California. One of the purposes of the Imperial Valley Renewable Energy Development Program is to “maximize development of all renewable energy resources.” An objective of the Project is “to help California meet its statutory and regulatory goal of increasing renewable power generation, including greenhouse gas reduction goals of Assembly Bill (AB) 832 (California Global Warming Solutions Act of 2006).” Pursuant to SB 2X, California utilities have been mandated to obtain 33% of their energy from renewable sources (wind, solar, geothermal, biofuels, etc.). These renewable energy policies and goals are directly related to statewide population growth.

**PLANNING COMMISSION RESOLUTION FOR  
CED WISTARIA SOLAR DEVELOPMENT AGREEMENT**

**Page 6 of 8**

The proposed use provides a clear long term economic benefit to the County. Solar energy projects provide economic growth to the region and economic benefit to the County and Goal 2 of the Land Use Element states that the County should “[d]iversify employment and economic opportunities in the County while preserving agricultural activity”. Goal 3, Objective 3.2 of the Land Use Element recognizes the need to “[p]reserve agricultural and natural resources while promoting diverse economic growth through sound land use planning.” As demonstrated by the Fiscal, Economic, and Employment Impacts Analyses done for the Project, the Project will create jobs and other economic opportunities in the County at a time of high County unemployment.

**D. Will not be detrimental to the health, safety and general welfare;**

The PV solar energy facilities are located in a largely undeveloped and unincorporated portion of south-southwest Imperial County. Land surrounding the solar farm complex site consists of agricultural fields with a checkerboard of private land. The facilities are not located near any large residential areas. Noise associated with solar panel operation would also meet the County’s noise ordinance requirements at the projects’ property lines. The Environmental Impact Report prepared for the Project analyzed the Project’s potential effects on the health, safety, and welfare of the public and property and found that, with mitigation, the Project has less than significant effects in all resource’s areas. The Project also prepared Fiscal, Economic, and Employment Impacts Analyses for the Project and the County finds that the Project will benefit the overall economic diversity and strength of the County, thus promoting the welfare of the County’s citizens. Finally, the Project applicant has agreed to conditions of approval that support and promote the protection of the health, safety, and welfare of the County’s citizens and property, and ensures that the County will not be negatively impacted environmentally or fiscally.

The proposed project will be subject to the Conditional Use Permit and current Federal, State and Local regulations. State Planning and Zoning Law (Cal. Govt. Code §§ 65000-66035) establishes minimum statewide standards for the regulation of local land use through planning and zoning. The County regulates local land use via Title 9 of the Imperial County Code. As found above, the proposed project is conditioned to be consistent with Imperial County, Title 9, Land Use Ordinance and CEQA mitigation measures and therefore complies with both State and local laws and ordinance.

Pursuant to CEQA, the County has prepared an EIR for the Project, which analyzes the Project’s compliance and consistency with other federal, state, and local laws and ordinances regulating the environment. Substantial evidence supports the conclusions in the EIR that the Project complies with said environmental laws. The County is aware of no other laws or ordinances that



**PLANNING COMMISSION RESOLUTION FOR  
CED WISTARIA SOLAR DEVELOPMENT AGREEMENT**

Page 7 of 8

might be implicated by the Project, and thus the finds that the proposed use does not violate any other law or ordinance.

**E. Will not adversely affect the orderly development of property or the preservation of property values.**

As outlined above, the Project is both consistent with the relevant provisions of the General Plan and meets or exceeds the minimum requirements governing land use in Imperial County. The Project, despite causing a temporary unavailability of the subject property for agricultural use during construction, operation, maintenance, and decommissioning of the Project, would restore and improve some of the infrastructure on the property including the main access and some of the existing ground water wells, which have, in some cases, become inoperable. Such occupation of and improvements to the property would revive its outward appearance and likely assist in stabilizing if not improving the values of surrounding properties.

Approval of the Project, along with construction and operation and maintenance of the Project will provide the County of Imperial with increased property tax revenue as well as other secondary economic benefits associated with the need to have a steady workforce and resource supply in the County of Imperial during both construction and operation of the Project, which may result in occupation of nearby residences by the long-term workforce responsible for operating and maintaining the Project.

**F. Will provide significant public benefits.**

As noted above, the proposed project is consistent with the County's goal of becoming a major source of renewable energy for California and fulfilling its mission to help California meet its statutory and regulatory goal of increasing renewable power generation, including greenhouse gas reduction goals of Assembly Bill (AB) 832 (California Global Warming Solutions Act of 2006). Imperial County is a major source of renewable energy for the State of California. One of the purposes of the Imperial Valley Renewable Energy Development Program is to "maximize development of all renewable energy resources." An objective of the Project is "to help California meet its statutory and regulatory goal of increasing renewable power generation, including greenhouse gas reduction goals of Assembly Bill (AB) 832 (California Global Warming Solutions Act of 2006)." Pursuant to SB 2X, California utilities have been mandated to obtain 33% of their energy from renewable sources (wind, solar, geothermal, biofuels, etc.). These renewable energy policies and goals are directly related to statewide population growth.

The proposed use provides a clear long term economic benefit to the County. Solar energy projects provide economic growth to the region and economic

**PLANNING COMMISSION RESOLUTION FOR  
CED WISTARIA SOLAR DEVELOPMENT AGREEMENT**

**Page 8 of 8**

benefit to the County and Goal 2 of the Land Use Element states that the County should “[d]iversify employment and economic opportunities in the County while preserving agricultural activity”. Goal 3, Objective 3.2 of the Land Use Element recognizes the need to “[p]reserve agricultural and natural resources while promoting diverse economic growth through sound land use planning.” As demonstrated by the Fiscal, Economic, and Employment Impacts Analyses done for the Project, the Project will create jobs and other economic opportunities in the County at a time of high County unemployment.

**NOW, THEREFORE**, based on the above findings, the Planning Commission of the County of Imperial **DOES HEREBY RECOMMEND** that the Board of Supervisors approve the proposed Amendments on the Development Agreement for the CED Wistaria Solar Project (“Project”).

---

Rudy Schaffner, Chairperson  
Imperial County Planning Commission

I hereby certify that the preceding resolution was taken by the Planning Commission at a meeting conducted on **March 12, 2025**, by the following vote:

**AYES**

**NOES**

**ABSENT**

**ATTEST:**

---

Jim Minnick, Director of Planning & Development Services  
Secretary of the Planning Commission

MSIS:\APN\052\170\014\CUP13-0036\pc hearing folder\DA folder\development agreement resolution 2 24 2025.doc

**PC ORIGINAL PACKET**

**Attachment C**  
**DA Extension Draft**



Recording requested by, and  
when recorded return to:

County of Imperial  
County Executive Office  
940 W. Main Street, Suite 208  
El Centro, CA 92243

---

**Imperial County Development Agreement  
Concerning Wistaria Ranch Solar Energy Center**

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is entered into by and between the **County of Imperial**, a political subdivision of the State of California, ("County") and **RWE Clean Energy Services, LLC**, a Delaware limited liability company licensed to do business in the state of California ("Developer") (individually, "Party;" collectively, "Parties") with respect to the development of real property in the County, known as the Wistaria Ranch Solar Energy Center ("Project").

1. **AUTHORIZATION.** California Government Code Sections 65864 through 65869.5 and Title 9, Division 23 of the County of Imperial Codified Ordinances (Sections 92301 – 92309) authorize the County to enter into binding development agreements with persons having legal or equitable interests in real property for the development of the property in order to establish certainty in the development process.
2. **PROPERTY AND PROJECT DESCRIPTION.**

**2.1. Property Description.** The real property which is the subject of this Agreement consists of consists of individual parcels totaling 1,832 acres within Wistaria Ranch Solar Energy Center Conditional Use Permits (CUPs) 13-0038, 13-0039, 13-0040, 13-0041, 13-0042, 13-0043, 13-0044, 13-0045, 13-0046, 13-0048, and 13-0049, APN 052-180-145-000, 052-180-034-000, 052-180-054-000, 052-180-015-000, 052-180-012-000, 052-180-011-000, 052-170-014-000, 052-180-002-000, 052-180-001-000, 052-440-009-000, 052-440-006-000, 052-350-020-000, 052-350-001-000, 052-350-002-000, 052-350-003-000, 052-350-004-000, 052-440-005-000, 052-440-003-000, and 052-440-004-000. This is an area south of Interstate 8, east of Pulliam Road, and north of the All American Canal in southwestern unincorporated Imperial County, generally bound by Wahl Road on the north, Brockman and Rockwood Roads on the west, and the U.S./Mexico border on the south, and Ferrell and Corda Roads on the east and is more particularly described in **Exhibit "A"** attached hereto ("Property").

**Project Description.** The development that is the subject of this Agreement consists of the project as described in the Final EIR certified by the Board of Supervisors for the Project. Generally, the project consists of 11 Conditional Use Permits (CUPs) 13-0038, 13-0039, 13-0040, 13-0041, 13-0042, 13-0043, 13-0044,

13-0045, 13-0046, 13-0048, and 13-0049 and 11 Variances and related improvements as more fully described in section 5 of this Agreement (“Project”).

3. **LEGAL OR EQUITABLE INTEREST IN PROPERTY.** Developer is the holder of options to lease or purchase the Property from the legal owners and has the consent of the legal owners to enter into this Development Agreement.

4. **APPROVALS.**

4.1. This Agreement was approved by Ordinance No. \_\_\_\_\_ (“DA Ordinance”), adopted on \_\_\_\_\_, 2024, and shall be effective on the date the DA Ordinance becomes effective (“Effective Date”).

4.2. As of the Effective Date, this Agreement has been given all required discretionary approvals from the following County entities:

4.2.1. Planning Commission;

4.2.2. Board of Supervisors.

4.3. County and Developer agree that the Planning Commission and Board of Supervisors provided their recommendations and discretionary approvals, as applicable (Planning Commission recommendation and Board of Supervisors approval) for the Project and received all public testimony thereon at public hearings properly noticed as provided in Government Code Sections 65867, 65090, and 65091, and County of Imperial Codified Ordinances Section 92303, in addition to any other notice required by law for other actions considered concurrently with the Agreement.

4.4. County and Developer agree that all environmental impacts associated with the development of the Project as provided under this Agreement have been analyzed and adequately addressed in the FEIR and Addendum thereto in accordance with the California Environmental Quality Act (“CEQA”), and that the adoption of this Agreement will not result in any new or different significant environmental effect, or substantial increase in severity of a previously identified significant environmental impact considered in the certified FEIR.

5. **ENTITLEMENTS; STATUTORY REQUIREMENTS FOR DEVELOPMENT AGREEMENT; PERMITTED USES; DENSITY/INTENSITY OF USE; HEIGHT AND SIZE; DEDICATION OF PUBLIC LANDS.**

5.1. **Entitlements.** The County’s Board of Supervisors has approved the following land use entitlements for the Property, which entitlements and their implementation are the subject of this Agreement:

5.1.1. Wistaria Ranch Solar Energy Center Conditional Use Permits 13-0038 thru 13-0046 and 13-0048 through 13-0049.

5.1.2. Wistaria Ranch Solar Energy Center Variances 13-0004 thru 13-0012, and 13-0014 through 13-0015.

5.1.3. Wistaria Ranch Solar Energy Center Final Environmental Impact Report (FEIR).

5.1.4. Wistaria Ranch Solar Energy Center CEQA Findings and Mitigation Monitoring and Reporting Program.

5.2. **Permitted Uses.** The permitted uses of the Property are those uses authorized and described in the CUPs and Variances, those uses described in the FEIR, and those uses allowed by right within the existing zone.

5.3. **Density/Intensity of Use.** The permitted density and intensity of use shall not exceed the density and intensity of the uses authorized and described in the CUPs and Variances, those uses described in the EIR, or those uses allowed by right within the existing zone.

5.4. **Height and Size.** The permitted height and size of proposed structures shall be the limits allowed by the existing zone except for structures qualified to exceed the high limit described in the Variances.

5.5. **Dedication/Reservation Public Lands.** The provisions for reservation or dedication of lands for public purposes are those described in the EIR for open space or habitat protection.

6. **DURATION OF AGREEMENT AND ENTITLEMENTS; PHASING; EARLY TERMINATION OF CUPS.**

6.1. The term of this Agreement shall commence on the Effective Date as defined in Paragraph 4.1 and shall extend for a period of ten (10) years following the Effective Date. The entitlements enumerated in Paragraph 5.1 are hereby extended for a period of ten (10) years following the Effective Date. This Agreement may be extended by mutual agreement of the Parties, or by authorization of the Planning Director, as set forth in the County of Imperial Codified Ordinances. Should the Project be subject to litigation the Term of this Agreement shall be extended accordingly.

6.1.1. Any CUP on which Commencement of Construction (as defined below) has not commenced by the tenth (10th) anniversary of the Effective Date of this Agreement, shall be of no further force and effect, unless otherwise extended.

6.1.2. As used here, "Commence Construction" or "Commencement of Construction" means the earlier of the date on which Developer obtains a grading permit or building permit, as may be applicable, in reliance on a CUP.

6.1.3. In addition to the terms and conditions of approved CUPs, the Developer shall pay on or before the issuance of the 1<sup>st</sup> Building Permit a nonrefundable contribution of **ten million dollars (\$10,000,000)** ("Nonrefundable Contribution Amount") to go towards County projects in County's sole discretion. This Nonrefundable Contribution Amount may be used for other public projects and purposes in County's sole discretion.

6.2. The term of this Agreement may terminate sooner as provided herein.

6.3. This Agreement shall run with the land in each CUP area for the term of this Agreement and shall bind each and every owner of such land.

6.4. The Project may be constructed in phases with each CUP area serving as an individual phase. No phase shall be smaller than a single CUP. The Project may also be constructed in groups of CUP areas.

6.5. Notwithstanding any other provision to the Agreement or the entitlements, in no event shall any entitlement exceed forty (40) years from the Effective Date of this Agreement. Such termination of the entitlements is consensual and shall not be subject to a public hearing. Note: the CUPs may be extended for an additional ten (10)-year period by the appropriate County entity (either the Planning Director, the Planning Commission or the Board of Supervisors as set forth in the applicable County of Imperial Codified Ordinances) upon a finding that the Project is in compliance with all conditions of the CUPs as stated herein and any applicable Land Use regulation of the County of Imperial. If an extension is necessary, the Permittee shall file a written extension request with the Planning Director at least sixty (60) days prior to the expiration date of the permit. Such an extension request shall include the appropriate extension fee.

## **7. RULES, REGULATIONS, AND POLICIES.**

7.1. County acknowledges that Developer would not enter into this Agreement or agree to provide the public benefits and improvements described in this Agreement if it were not for the commitment of the County that the Property can be developed, in accordance with County's ordinances, rules, regulations, and policies, including but not limited to those governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications applicable to the development of the Property existing as of the Effective Date of this Agreement.

7.2. The Property shall not be subject to any subsequently enacted amendment, modification of, or substitution for, the General Plan, zoning, or subdivision ordinances without the mutual written consent of the County and Developer, except as otherwise provided here.

7.3. Except as otherwise provided in this Agreement, Developer shall have the right, to the fullest extent permitted under California Government Code Sections 65864 et seq. and provisions of the County of Imperial Codified Ordinances to: (1) develop

the Property in accordance with this Agreement, rules, regulations, ordinances, policies, conditions, environmental regulations, exactions, entitlements, assessments, payments, and fees applicable to and governing development of the Property in effect as of the Effective Date of this Agreement; and (2) develop the Property with respect to the permitted use(s) of land, density, and intensity of use(s), and timing and phasing of development as generally described in this Agreement and in the entitlements set forth in Section 5 of this Agreement in effect as of the Effective Date of this Agreement, provided that:

- 7.3.1. Developer acknowledges that the Project must comply with all future amendments, modifications, or alterations of County's building, plumbing, mechanical, electrical, signage, and fire codes.
- 7.3.2. If a conflict between this Agreement and federal or State laws or regulations arises that prevents or precludes compliance with one or more provisions of this Agreement, such provisions of the Agreement shall, without further action by either Party, be deemed suspended as may be necessary to allow continuous compliance with such State or federal laws or regulations, and such suspension shall mean that non-compliance with such suspended provisions shall not be a breach of this Agreement from and after the date on which such conflict arose. County and Developer shall meet and confer in good faith in a reasonable attempt to modify the suspended terms of this Agreement to the extent feasible so that such terms, as modified, can be met without conflicting with federal or State laws or regulations.
- 7.3.3. Nothing in this Agreement shall be construed to be in derogation of County's police power to protect the public health and safety in the event of a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services involving the Property or the community.
- 7.3.4. Developer acknowledges that the Project must comply with any new or amended ordinance, resolution, rule, regulation, or policy that does not conflict with the entitlements, or those ordinances, resolutions, rules, regulations, and policies in effect at the Effective Date, and that is generally applied equally to all real property in the County with the same zoning designations and/or land uses. A conflict is one that would significantly limit the authorized disturbance area within the CUPs. Developer further acknowledges that this Agreement does not prevent the County from denying or conditionally approving any subsequent discretionary development project application on the basis of such existing or new rules or regulations.
- 7.3.5. This Agreement shall not be construed to limit the authority or obligation of County to hold necessary public hearings, or to limit the discretion of County or any of its officers or officials with regard to rules, regulations,



ordinances, laws, and entitlements of use that require the exercise of discretion by County, or any of its officers or officials, provided that subsequent discretionary actions: (1) shall not prevent or delay development of the Property for the uses and to the density and intensity of development as provided by this Agreement and the other entitlements in effect as of the Effective Date of this Agreement; and (2) shall not be inconsistent with the entitlements.

8. **INFRASTRUCTURE CAPACITY.** Subject to conditions of approval requiring specific upgrades, County hereby acknowledges that it has been informed that the Project will have sufficient capacity in its services, and utility systems, including without limitation, traffic circulation, flood control, water supply treatment, distribution, and service, to accommodate the Project.

8.1. Prior to the issuance of final Certificate of Occupancy, the Project/CUP owner shall be responsible for repairing of any roads and bridges it will utilize via improvements as determined by the County Road Commissioner based on the final and approved access points in the Project's grading and improvements plans.

9. **PUBLIC BENEFITS PROVIDED BY DEVELOPER.** County acknowledges that Developer's performance under this Agreement provides significant public benefits to County, including, but not limited to:

9.1. **FEIR Mitigation Measures and Conditions of Approval.** Notwithstanding any other provision in this Agreement to the contrary, if Developer elects to develop the Project on the Property, Developer shall be bound by, and shall perform, all CUP provisions, conditions of approval and mitigation measures for which Developer is responsible as contained in the Project entitlements and certified FEIR for the Project, as well as those provided in this Agreement, and failure to do so without prior County authorization shall be a default under this Agreement as well as CUPs. In the event of a conflict among the terms of Agreement, CUPs and the FEIR / MMRP, the hierarchy of documents that shall control the Parties' rights and obligations are the FEIR, the Agreement, MMRP, then CUPs.

9.2 **Public Service Benefit.** Developer shall make Public Service Benefit payments to County, which will be used to provide for a concerted and coordinated effort to maximize the benefits of the solar project to the County of Imperial and its residents (the "Public Service Payment"). Such benefits might include, but are not limited to, infrastructure improvement, job creation, community services, economic development and enhancement to the quality of life in neighboring communities. Developer shall pay the Public Service Payment as follows:

9.2.1. **Annual Payment Structure.** Developer shall make annual Service Benefit payments pursuant to the Public Benefit Program Guidelines (attached hereto as **Exhibit "C"**), the payment structure shall be as follows:

- a) Each year, beginning on the Public Service Payment Date (as

defined below), as specified within the site-Specific Conditions within the Conditional Use Permit shall be limited to a maximum of thirty (30) years from the recordation of the permit. The Developer shall pay to County an amount equal to six hundred dollars (\$600) per acre of farmland for of the Project. The Developer shall pay to County an amount equal to four hundred fifty dollars (\$450) per acre of non-farmland for of the Project. Payment for farmland and non-farmland shall be increased annually to reflect a CPI of 2.5 percent.

- b) In any event, Developer shall be responsible for annual Service Benefit Payments for each and every year the project remains in operation, until such time as the Project is decommissioned and the Project site is returned to its original condition, as required by the Project CUP.

**9.2.2. Due Date.** The first Service Benefit Payment is due and shall be paid to the County Executive Office prior to the issuance of the first grading permit or building permit (whichever is issued first) for energy producing facilities on the Site (the "Service Benefit Payment Date") and every twelve (12) months thereafter until the expiration of the term of this Agreement in accordance herewith.

**9.2.3. Late Payments.** If Developer receives a bill from County, payment to County shall be due within thirty (30) days of Developer's receipt thereof. Payments received by County after the thirtieth (30<sup>th</sup>) day following Developer's receipt of a bill shall be deemed late. Developer hereby agrees to pay interest at the rate of six percent (6%) per annum of the payment due on the amount of any payment received by County beyond the due date. Said interest shall be included with the late payment. The obligation to pay interest shall be stayed when such amounts are disputed in good faith, so long as Developer submits the payments "under written protest." Upon determination of dispute, such interest may be assessed if it is determined that the dispute was not made in good faith.

**9.2.4. Application of Subsequently Enacted Rules, Regulations, and Official Policies.**

- a) County may adopt new or modified Rules, Regulations, and Official Policies after the Effective Date of this Agreement ("New Rules"); provided, however, such New Rules shall be applicable to the Project only to the extent that such application will not result in the payment of amounts above the Agriculture Benefit and Community Benefits amounts due and payable to the County pursuant to this Agreement.
- b) Notwithstanding the foregoing, County shall not be precluded from applying any New Rules to the Project where the New Rules are:

1. Specifically mandated by changes in state or federal laws or state or federal regulations adopted after the Effective Date;
2. Specifically mandated by a court of competent jurisdiction;
3. Changes to the Uniform Building Code or similar uniform construction codes, or to County's local construction Ordinances for public improvements so long as such code or Ordinance has been adopted by County and is in effect on a County-wide basis and is not applied retroactively (in the event of a conflict between this Section and Section II.B.2.a, Section II.B.2.a shall prevail.);
4. Required as a result of facts, events or circumstances presently unknown or unforeseeable that would otherwise have an immediate adverse risk on the health or safety of the surrounding community; or
5. New or increased regulatory processing fees so long as such fees are not applied retroactively and are applied to all development projects on a countywide basis. (In the event of a conflict between this Section and Section II.B.2.a, Section II.B.2.a shall prevail.)

**9.2.5. California State Property Tax Exemption:** If the property taxes for the Project exceed the base year assessment determined after the completion of the Project, plus two percent (2%) annual increase, then ten percent (10%) of that increase in property taxes is credited to the Service Benefit payment due that year. The Parties agree that the Project shall have a guaranteed assessed valuation of \$57,529,690, and the depreciation rate for property tax purposes shall be based on the County of Imperial Commercial Year (C-30) depreciation schedule. The applicable Depreciation Table is attached hereto as **Exhibit "D"**. The Parties agree that any Property requiring assessment shall be assessed utilizing an income approach. The Parties further agree that all assessed Property values shall increase by a fixed rate of 2% per annum, including but not limited to non-solar improvements and battery storage, irrespective of the Consumer Price Index or any other factor, to ensure that County and other regional taxing authorities receive the scheduled revenue. This Agreement shall be in full compliance with Proposition 13 in all other aspects. Developer and Property owner(s) agree not to appeal the Property's assessed value to the County Board of Equalization / Assessment Appeals Board for the duration of the Project operation, or 30 years, whichever comes first. This is necessary to mitigate the fiscal costs to County to host this facility and Project.

**9.2.6. Periodic Compliance Review.** County shall review Developer's good faith compliance with the terms of this Agreement on an annual basis.



Developer shall submit evidence of good faith compliance with this agreement on an annual basis.

**9.3. Sales Tax Benefit.**

**9.3.1.** Developer will require that all qualifying contractors and subcontractors exercise their option to obtain a California Department of Tax and Fee Administration (CDTFA) sub-permit for the jobsite and allocate all eligible use tax payments to Imperial County and LTA.

**9.3.2.** Prior to commencement of any construction activity at the Project Site, Developer shall require that the contractor or subcontractor provide County with a copy of their CDTFA account number and sub-permit. Developer shall either cause its construction contractor to treat the Project in accordance with California Sales and Use Tax Regulation 1521(b)(2)(B), California Sales and Use Tax Regulation 1521(c)(13)(B), and California Sales and Use Tax Regulation 1826(b) for sales and use tax purposes, or form a "Buying Company" as defined in the California Sales and Use Tax Regulation 1699(h). Developer may adopt an alternate methodology to accomplish this goal if such methodology is approved by the County's Executive Officer, which approval shall not be unreasonably withheld or delayed, prior to issuance of any building permit.

**9.3.3.** No later than forty-five (45) days after the due date for filing sales and use tax returns for each calendar quarter, occurring after the commencement of any construction activity on-site through and including the first anniversary of commercial operating date ("COD"), Developer shall report to County, the total amount of sales and use taxes related to the Project that are allocated to the County, and reported on Developer's, general contractor's and subcontractors' applicable California sales and use tax returns.

**9.3.4.** Guarantee Amounts. Prior to the issuance of any building permit for the Project, Developer shall provide County with a guarantee of the minimum sales and use taxes (based on a total output capacity of one hundred megawatts ["100 MW"] alternating current solar generation facility with an integrated two hundred ["200 MW"] megawatt battery storage system for the Project) that will be received by County and LTA under existing applicable sales and use tax laws. Developer warrants that the sales/use tax guarantee amounts to be provided to County as mandated in this paragraph shall be true and accurate estimates of the projected sales and use taxes that will be generated for this Project. Developer shall provide County with evidence of the projected sales/use taxes for the Project, including but not limited to sales tax receipts, and executed or anticipated engineering contracts, procurement contracts, and construction contracts. If the Parties

are unable to agree upon a guarantee amount, then the dispute shall be referred to an independent accountant mutually acceptable to both Parties. The costs for such nonbinding mediation shall be borne by Developer. Developer warrants that the sales/use tax guarantee amounts to be provided to County as mandated in this paragraph will incorporate any and all sales/use tax exemptions that Developer and/or its contractors and subcontractors intend to utilize, and that such exemptions will be disclosed to County fully and in good faith prior to the issuance of any building permit for this Project. Developer understands and acknowledges that the sales/use tax guarantee amounts to be provided to County as mandated by this paragraph are a part of the consideration to be received by County in return for entering into this Agreement, and further understands and acknowledges that County would not enter into this Agreement but for said guarantee from Developer. In the event that County and / or LTA receives less than the amount of sales / use taxes guaranteed pursuant to this paragraph, then Developer shall pay, as and when provided below, to County or LTA as applicable, the amount of the applicable shortfall.

**9.3.5. Adjustments to Guarantee Amounts.**

- (a) The amount of sales and use tax anticipated to be generated is based on the projected construction of a one hundred (100) megawatt alternating current (100 MW [AC]) solar generation facility with an integrated two hundred (200) megawatt battery storage system. Construction of any additional output capacity beyond the 100 MW output or storage capacity now projected will require the sales / use tax guarantee amounts to be adjusted based on the actual output from solar generation facilities of the Project as evidenced by any power purchase agreement subsequently entered into by Developer related to this Project.
- (b) To the extent of any reduction in the size of the Project as the result of any final ruling, stipulated judgment, or settlement, the sales / use tax guarantee amounts mandated under paragraph D shall be reduced pro rata based on the size of such reduction. To the extent of any reduction in the size of the Project as the result of any final ruling, stipulated judgment, or settlement, in accordance with Section V.C below, the not-to-exceed amounts set forth in Section III.B shall be reduced pro rata based on the size of such reduction.

- 9.3.6.** The complete amount due to County for the Project must be received within one (1) year after Commercial Operation Date (“COD”) for this Project. If, within one (1) year after issuance of the final Certificate of Occupancy, the sales and use taxes received by the County are less than the amount guaranteed for that portion of the project, Developer shall pay the difference to the County.

- 9.3.7. Payments to County and LTA as a result of a shortfall shall be due within thirty days of Developer's receipt of written notice of shortfall from the County. Payments received by County after the ninetieth (90<sup>th</sup>) day following Developer's receipt of notice shall be deemed late. Developer hereby agrees to pay interest at the rate of six percent (6%) per annum of the payment due for any payment received by County beyond the due date. Said interest shall be included with the late payment. The obligation to pay interest shall be stayed when such amounts are disputed in good faith, so long as Developer submits the payments "under written protest." Upon determination of dispute, such interest may be assessed if it is determined that the dispute was not made in good faith.
- 9.3.8. In the event that Developer repowers or replaces the equipment onsite, each Site shall be designated as the "Point of Sale" so as to create an additional local tax-funding source for the County of Imperial.
- 9.3.9. Developer shall provide an approved water supply capable of supplying the required fire flow to the Project as determined by Appendix B of the 2019 California Fire Code. Developer shall be responsible for all costs associated with the provision of the water supply, including but not limited to installation and maintenance. Developer shall also install and maintain private fire service mains and appurtenance in accordance with NFPA section 24. Project will provide adequate Fire water. Fire Department will determine number of gallons to be placed strategically once site plan is reviewed.
- 9.3.10. An approved automatic fire suppression system shall be installed on all required structures as per the adopted California Fire Code at time of building permit issuance. All fire suppression systems will be installed and maintained to the current adapted fire code and regulations.
- 9.3.11. An approved automatic fire detection system shall be installed on all required structures as per the California Fire Code. All fire detection systems will be installed and maintained to the current adapted fire code and regulations.
- 9.3.12. Developer must develop an Emergency Operation Plan in conjunction with local fire service personnel and the AHJ and hold a comprehensive understanding of the hazards associated with solar power plant technology and must incorporate adequate explosion prevention protection as required in NFPA 855 and International Fire Code Chapter 12.
- 9.3.13. Project access roads and gates will be installed and maintained in accordance with the current adapted fire code. Developer shall maintain a Knox Box for access to the Project site. Developer will install signage that

identifies the contents of an ESS as required on all ESS installations to alert first responders to the potential hazards associated with the installation.

**9.3.14.** Developer shall provide product containment areas(s) for both product and water run-off. All product and water runoff shall be retained for removal in accordance with applicable law.

**9.3.15.** All hazardous materials shall be handled, stored, and disposed of in accordance with an approved Hazardous Waste Materials Plan ("HWMP"). All spills shall be documented and reported to County Fire/OES and the County Certified Unified Program Agency as required by applicable law. The Hazardous Waste Material Plan shall be submitted to Certified Unified Program Agency (CUPA) for their review and approval.

**9.3.16.** Any Fire Mitigation Payments set out in the CUP are separate from the payments required under this section.

**10. VALUE OF PAYMENTS.** In addition to other provisions of this Agreement, all payments referenced in this Agreement shall escalate annually beginning on January 1, 2025, based upon the Consumer Price Index – Los Angeles SMSA – all urban consumers ("CPI"), but in no case shall the CPI be less than zero (0).

**11. EMINENT DOMAIN.** The Parties to this Agreement understand and acknowledge that County has no present or foreseeable future need to acquire public access to the Project not already authorized under the CUP and/or County-issued entitlements for this Project. However, should a future need arise in which County requires additional public access to the Project, County shall, before engaging in any eminent domain proceedings, meet and negotiate in good faith with Developer concerning the proposed public access to the Project.

**12. PERIODIC REVIEW.**

**12.1.** County shall review the extent of good faith compliance by Developer with the terms of this Agreement at least every twelve (12) months pursuant to California Government Code section 65865.1.

**12.2.** Upon written request from the County, Developer shall have the duty to demonstrate its good faith compliance with the terms of this Agreement.

**12.3.** Any County failure to annually review Developer's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by County or Developer to be a breach or default of the Agreement, and shall not be used as grounds to amend, modify, alter, or terminate the Agreement.

**13. ASSIGNMENT AND DELEGATION.** As set out here, Developer may sell, transfer, or assign (collectively, "assign") all or part of Developer's rights, title and interest in the Project. This Agreement shall be binding on all successors in interest of the Developer pursuant to County of Imperial Codified Ordinances Code Section 92325.

- 13.1. Partial Assignment.** When one or more CUP is assigned, but the assignment is of less than the entire Project area, the assignment is referred to herein as a “partial assignment.” The assignment, including but not limited to any partial assignment, shall expressly include the assignment and assumption of all rights, duties, and obligations arising under or from this Agreement, other County-issued entitlements and the MMRP applicable to the CUP. There shall be no assignment of less than the entire CUP area, and any such attempted assignment is void.
- 13.2.** Developer shall not, without prior notification to the Imperial County Planning and Development Services Department, assign, sell, transfer, or grant control of the Project, or any right or privilege therein granted by the CUP. The Developer shall provide a minimum of forty-five (45) days written notice prior to any proposed transfer becoming effective. An approved assignment agreement shall be in place for the new Project owner to build and maintain as agreed to by the conditions set forth in this Agreement. The County Assessor’s Office shall be notified of any ownership change.
- 13.3.** Within fifteen (15) calendar days after an assignment: (1) Developer shall notify the County, in writing, of such assignment and shall provide County with both: (a) an executed copy of the assignment evidencing that the assignee expressly assumes all the assigned duties and obligations of Developer under this Agreement, other County-issued entitlements, and the MMRP applicable to the CUP area; and (b) Developer’s requested form of release of such duties and obligations related to that CUP area; (2) assignee shall provide County with the assignee’s financial security equal in value to the financial security required of Developer by the Project entitlements including any and all entitlement-required increases to secure performance of its obligations with respect to the portion of the Project assigned, including but not limited to that for the decommissioning and reclamation plan; and (3) Developer and/or assignee shall provide any and all additional information necessary to determine the sufficiency of such replacement financial security. As used here “financial security” may mean one or more security instruments which can include letters of credit, performance bonds, or other forms of security consistent with those previously accepted by the County for this or other development projects in the County.
- 13.4.** Within forty-five (45) calendar days of delivery of the information required under Paragraph 13.3, the County Planning and Development Services Department shall determine the sufficiency of the replacement security in its reasonable discretion, which can include letters of credit, performance bonds, or other forms of security consistent with those previously accepted by the County for this or other development projects. The County shall have the discretion to require security having a greater value (i.e. a larger face amount) than the security being replaced related to that CUP area when such security is subject to increase pursuant to the provisions of the CUP. Notwithstanding the failure of any assignee to execute the assignment or provide the required security, the burdens of this Agreement shall be binding upon such assignee, but the benefits of this Agreement shall not inure to such assignee until and unless such assignment is executed, and such security is



provided and the County has delivered a written release to Developer confirming the sufficiency of the replacement security.

13.5. Notwithstanding any sale, transfer, or assignment, Developer shall continue to be obligated under this Agreement until the County executes a release of such financial security. The County's unreasonable failure to approve the assignment or execute such release may be a default under Section 18 of this Agreement.

13.6. County shall be reimbursed by Developer for any costs of review of the replacement financial security instrument(s).

14. **RELATIONSHIP OF COUNTY AND DEVELOPER.** The contractual relationship between County and Developer arising out of this Agreement does not create an agency relationship.

15. **INDEMNIFICATION AND HOLD HARMLESS.**

15.1. Developer shall indemnify and shall hold the County, its officers, agents, attorneys and employees harmless from third-party liability, claims, demands, expenses or costs, including but not limited to costs of experts and separate attorneys chosen by County at County's sole discretion: (1) to attack, set aside, void or annul this Agreement, any entitlement, CUP, approval or the certification of any environmental document accompanying such entitlements, or any determination made under such CUP or this Agreement, whether there is concurrent, passive, or active negligence on the part of the County, its officers, agents, attorneys, or employees; or (2) for personal injury (including but not limited to death), property damages, just compensation, judicial or equitable relief, arising or alleged to arise from the direct or indirect operations of the Developer or its contractors, subcontractors, agents, employees, or other persons acting on Developer's behalf that relate to the Project (including but not limited to Developer's actions or failure to act in drilling, grading, construction, operation, abandonment, reclamation or decommissioning) of the Project or any CUP.

15.2. Developer shall execute County's most current form of indemnification funding agreement. County and Developer shall cooperate in the defense against claims subject to these indemnities and Developer shall enter into the applicable form of agreement to confirm such joint defense. Notwithstanding, Developer's failure to provide payment of any fees or costs required under this Agreement shall cause Developer to be in non-compliance with this Agreement. Upon notification of such non-compliance, County may, at its sole discretion, cease processing of the Project or defending any lawsuit or paying for costs associated with the Project.

16. **AMENDMENT OR CANCELLATION.** This Agreement may be amended or canceled by the mutual consent of County and Developer, in the manner set forth in California Government Code section 65868 and County of Imperial Codified Ordinances Sections 92306.00 and 92306.01.

17. **MINOR MODIFICATION.** Unless as otherwise required by law (including but not limited to the County of Imperial Codified Ordinances) interpretations and minor modifications or changes can be made to the Project with the mutual agreement of Developer and the County's Planning Director, only in one (1) of the following circumstances:
- 17.1. Where the change is: (i) ministerial or mutually agreeable to the County's Planning Director and Developer; (ii) constitutes an administrative interpretation or less than significant amendment; (iii) constitutes a change or technical modification to the design, construction, and/or operation of the Project under the existing applicable rules, regulations, and laws of the County; or (iv) amends the CUP to allow development and operation of the Project subject to two or more CUPs, provided that the subsequent CUPs shall be bound by the effective date and term of the original CUP, and does not:
- 17.1.1. Alter the permitted uses of the Property as a whole or within any CUP;
- 17.1.2. Increase the density or intensity of use of the Property as a whole or within any CUP;
- 17.1.3. Increase the maximum height and size of permitted buildings or structures;
- 17.1.4. Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole;
- 17.1.5. Conflict with a condition of approval or MMRP provision; or
- 17.1.6. Constitute a discretionary approval by the County for which a subsequent or supplemental environmental impact report would be required pursuant to Section 21166 of the California Public Resources Code.
- 17.2. Where the change is ministerial, mutually agreeable to County and Developer, and constitutes an administrative interpretation, less than significant amendment, or change or technical modification to the design, construction, and/or operation of the Project under the existing applicable rules, regulations, and laws of non-County agencies as to Project matters within their sole jurisdiction.
18. **DEFAULT.** A default under this Agreement shall be deemed to have occurred upon the happening of one or more of the following events or conditions:
- 18.1. A warranty, representation, or statement made or furnished in this Agreement by either Party proves to have been false in any material respect when it was made.
- 18.2. A finding by County pursuant to County of Imperial Codified Ordinances Sections 92308.00 and 92308.01, based on substantial evidence, that the Developer has not complied in good faith with one or more of the terms or conditions of this Agreement.

18.3. Any other act or omission by either Party which breaches or materially interferes with the terms of this Agreement.

18.4. A default under this Agreement with respect to obligations owed to the County by the Developer shall not constitute a default under this Agreement to the extent this Agreement has been partially assigned to another entity in accordance with Section 13, and a default under this Agreement with respect to obligations owed to the County by an assignee of a portion hereof in accordance with Section 13 shall not constitute a default under this Agreement by the Developer.

19. **PROCEDURE UPON DEFAULT.**

19.1. Upon the occurrence of default by Developer or County, prior to any proceedings pursuant to Title 9, Division 23 of the County of Imperial Codified Ordinances, and as an informal resolution procedure prior to any litigation being filed (including but not limited to any breach of contract action), the non-defaulting party shall provide the other party written notice specifying the nature of the alleged default and the actions required to cure such default. Such notice shall not be required in the event the default creates a threat to public health and safety.

19.2. After proper notice, the non-defaulting Party has the option to terminate the Agreement if: (1) the defaulting Party fails to take such actions or otherwise cure such default within forty-five (45) calendar days after the receipt of such notice; or (2) in the event that such default cannot be cured within such forty-five (45) calendar day period but can be cured within a longer time, the defaulting party fails in such forty-five (45) day period to commence the actions necessary to cure such default and to diligently proceed to complete such actions and cure such default.

19.3. All other remedies at law or in equity which are not inconsistent with the provisions of this Agreement are available to County and Developer to pursue in the event there is a default.

20. **LEGAL ACTION.** Either Party may institute legal action to cure, correct, or remedy any default, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation, or to compel specific performance. In no event shall County or its officers, employees or agents be liable in damages for any breach of this Agreement, it being expressly understood and agreed that the sole remedy available to Developer for a breach of this Agreement by County shall be a legal action in mandamus, specific performance (including the return of protested fees or other payments), injunction or declaratory relief to enforce the Agreement.

21. **ATTORNEYS' FEES.** In the event any legal action is brought to enforce or construe this Agreement, the prevailing Party shall be entitled to an award of reasonable attorneys' fees, expert witness and consulting fees, and litigation costs.



22. **DISCRETION TO ENCUMBER.** This Agreement shall not prevent or limit Developer from encumbering the Property, or any improvement on the Property, by any mortgage, deed of trust, or other security device.

23. **ENTIRE AGREEMENT; WAIVER AND RECORDED STATEMENT.** This Agreement constitutes the entire understanding and agreement of County and Developer with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between County and Developer respecting this Agreement. Any County waivers of the provisions of this Agreement must be authorized by the terms of this Agreement or by County ordinance, and approved as set out therein. Any waiver by Developer shall be in writing. No waiver of any term or condition of this or any determination of a protest hereunder shall be a continuing waiver or determination hereunder. Upon the completion of performance of this Agreement, or its revocation or termination, a statement evidencing completion, revocation, or termination signed by the appropriate agents of County shall be recorded in the Official Records of Imperial County, California.

24. **NOTICES.**

24.1. All notices or deliveries required or provided for by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the following:

**COUNTY**

County of Imperial  
Attn: County Executive Officer  
940 W. Main St., Suite 208  
El Centro, CA 92243

**DEVELOPER**

RWE Clean Energy  
101 West Broadway, Suite 1120  
San Diego, CA 92101

With a copy to:

County of Imperial Planning Department  
Attn: Planning Director  
801 Main Street  
El Centro, CA 92243

24.2. County or Developer may change its address by giving notice in writing to the other Party. All notices or deliveries shall be deemed to have been given when received.

25. **CAPTIONS.** The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify, or aid in the interpretation, construction, or meaning of any provision of this Agreement.
26. **RECORDING.** The Clerk of the Board shall cause a copy of this Agreement to be recorded with the Office of the County Recorder of Imperial County, California, within ten (10) days following the execution of this Agreement, pursuant to California Government Code section 65868.5.
27. **INTERPRETATION AND GOVERNING LAW.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the state of California.
28. **VENUE.** In the event of any legal or equitable proceeding arising out of or relating to this Agreement, the Parties agree that venue shall lie only in the federal or state courts located in the County of Imperial.
29. **TIME OF ESSENCE.** Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.
30. **UNENFORCEABLE PROVISIONS.** The terms, conditions, and covenants of this Agreement shall be construed, whenever possible, as consistent with applicable laws and regulations. To the extent that any provision of this Agreement as so interpreted is held to violate any applicable law or regulation, the remaining provisions shall nevertheless be carried into full force and effect and remain enforceable.
31. **REPRESENTATION OF CAPACITY TO EXECUTE CONTRACT.** Each Party to this Agreement represents and warrants that the person or persons signing have the authority to execute this Agreement on behalf of the Party represented by those individuals.
32. **NO WAIVER.** The failure of either Party to enforce any term, covenant, or condition of this Agreement on the date it is to be performed shall not be construed as a waiver of that Party's right to enforce this or any other term, covenant, or condition of this Agreement at any later date, or as a waiver of any term, covenant, or condition of this Agreement.
33. **COUNTERPARTS.** This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all the Parties had executed the same instrument.
34. **FORCE MAJEURE.** Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations is beyond its reasonable control, such as, floods, earthquakes, acts of God, fires, wars, riots or similar hostilities, strikes, and other labor difficulties. Economic factors shall not be considered beyond the reasonable control of a Party.
35. **GENDER, NUMBER AND INTERPRETATION.** As used herein, the neutral gender includes the masculine and feminine, the feminine gender includes the masculine, and the masculine gender includes the feminine. As used herein, the singular of any word includes

the plural. In the event of an ambiguity, there shall be no presumption against the drafter, all Parties hereto being represented by counsel.

36. **FURTHER COOPERATION.** Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement, and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute with acknowledgment or affidavit (if reasonably required) and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and fulfill the provisions of this Agreement, or to evidence or consummate the transactions contemplated by this Agreement. Notwithstanding the foregoing sentence, if Developer delivers to County a written request for an estoppel certificate confirming that there is no default under this Agreement, that this Agreement is in full force and effect, or that this Agreement has not been amended, then the County shall use its best efforts to respond within twenty (20) calendar days of the provision of such estoppel certificate and all necessary supporting information for such issuance.
37. **SURVIVAL.** Developer's payment obligations to County as specified in Sections 9 and 10 shall survive the expiration or termination of this Agreement.

///

///

///

///

///

///

**IN WITNESS WHEREOF**, the Parties have notarized and executed this Agreement as of the Effective Date stated in this Agreement as authorized by Ordinance No. \_\_\_\_\_ of the Board of Supervisors of the County of Imperial.

**County of Imperial**

**RWE Clean Energy**

By: \_\_\_\_\_  
Luis A. Plancarte, Chairman  
Imperial County Board of Supervisors

By: \_\_\_\_\_  
Christina Gisbert  
Director, Region West

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Blanca Acosta, Clerk of the Board,  
County of Imperial, State of California

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Eric Havens  
County Counsel

Date: \_\_\_\_\_

**Exhibit A  
Legal Descriptions**

**CONDITIONAL USE PERMITS**

**CUP 13-0038**

**052-180-045**

Parcel II:

The Southwest quarter of Section 2, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof.

Excepting therefrom, the West 25 feet *and* the South 25 feet thereof, conveyed to the County of Imperial by deed recorded December 10, 1937, in Book 475, Page 325 of Official Records.

(APN: 052-180-045)

**CUP 13-0039**

**052-180-034**

Parcel II:

The West half of the Southeast quarter of Section 2, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the official government plat thereof.

(APN: 052-180-034)

**052-180-054**

That portion of the East Half of the Southeast quarter of Section 2, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official plat thereof, described as follows:

Parcel 2 on Parcel Map M-1420 on file in Book 6, Page 4 of Parcel Maps in the Office of the County Recorder of Imperial County.

(APN: 052-180-054)

**CUP 13-0040**

**052-180-015**

Parcel III:

Lots 3 and 4 *and* the South half of the Northwest quarter of Section 2, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof.

(APN: 052-180-015)

**CUP 13-0041**

**052-180-012**

**Parcel II:**

Lots 1 and 2 *and* the South half of the Northeast quarter of Section 3, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof.

(APN: 052-180-012)

**CUP 13-0042**

**052-180-011**

**Parcel 3:**

Lots 3 and 4 in Section 3, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: Portion of 052-180-011)

**Parcel 4:**

The Southeast quarter of the Northwest quarter of Section 3, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: Portion of 052-180-011)

**052-180-002**

**Parcel I:**

The West half of the Southwest quarter of Section 3, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof. Excepting therefrom, that portion lying South of the Greeson Drain.

(APN: 052-180-002)

**052-180-001**

The Southwest quarter of the Northwest quarter of Section 3, Township 17 South, Range 13 East, San Bernardino Base and Meridian, according to the map of the official government plat thereof.

(APN: 052-180-001)

**052-170-014**

**Parcel I:**

The Southeast quarter of the Northeast quarter of Section 4, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof.

(APN: 052-170-014)

**052-440-009**

Parcel 2:

Lots 22 and 25 in Section 33, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: 052-440-009)

**CUP 13-0043**

**052-350-021**

Parcel 1:

That portion of Tract 213, being that portion of Section 34, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the Official Plat thereof, described as follows:

Beginning at the northeast corner of Lot 14, Section 34; thence running South 00°07'00" East, a distance of 1,102.20 feet to the southwest corner of Lot 22, of said Section; thence North 89°58'00" West, a distance of 17.00 feet to a point; thence South 00°22'00" West, a distance of 304.03 feet to a point; thence North 89°58'00" West, a distance of 1,220.52 feet to a point; thence North 00°07'00" East, a distance of 1,406.50 feet to a point intersecting the north boundary of Lot 12, in said Section 34; thence South 89°58'00" East, a distance of 1,238.85 feet to the point of beginning.

(APN: Portion of 052-350-021)

Parcel 2A:

That portion of Tract 213 and portion of Lots 30 and 32 in Section 34, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the Official Plat thereof, described as follows:

Beginning at the northwest corner of said Tract 213; thence South, on and along the west line of said Tract, 40 feet; thence East, on a line parallel with the north line of said Tract, 296.00 feet; thence South, on a line parallel with the west line of said Tract,

296.00 feet; thence West, on a line parallel with the north line of said Tract, 296.00 feet to the west line of said Tract; thence South, on and along the west line of said Tract, 2,304 feet to the southwest corner of said Tract; thence East, on and along the south line of said Tract, 260.04 feet; thence South 20.04 feet; thence East, on a line parallel with the south line of said Tract, 2,196.13 feet; thence North 00°22'00" East, 1,262.18 feet; thence West 1,220.52 feet; thence North 00°07'00" West

1,406.50 feet to the north line of said Tract; thence West, on and along the north line of said Tract, 1,238.80 feet to the northwest corner of said Tract, the point of beginning.

Excepting therefrom, the right and title to the structures, trees and major vegetation located on that portion of the property lying within the Northerly 300.00 feet of the Westerly 600.00 feet of said Tract 213, as conveyed to San Diego Gas and Electric Company, a corporation, by deed recorded September 29, 1982 in Book 1490, Page 1200 of Official Records.

(APN: Portion of 052-350-021)

Parcel 2B:

All structures, trees and major vegetation situated on:

The Northerly 300.00 feet of the Westerly 600.00 feet of Tract 213, Section 34, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof, according to the Official Plat thereof.

Excepting therefrom, that portion of Tract 213, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the Official Plat thereof, described as follows:

Commencing at the northwest corner of said Tract 213; thence South on the west line of said Tract, 40.00 feet to the point of beginning; thence East 296.00 feet; thence South

296.00 feet; thence West 296.00 feet to the west line of said Tract; thence North, on the west line of said Tract, 296.00 feet to the point of beginning.

(APN: Portion of 052-350-021)

**052-350-022**

Parcel 3:

That portion of Tract 213, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the Official Plat thereof, described as follows:

Commencing at the northwest corner of said Tract 213; thence South on the west line of said Tract, 40.00 feet to the point of beginning; thence East 296.00 feet; thence South

296.00 feet; thence West 296.00 feet to the west line of said Tract; thence North, on the west line of said Tract, 296.00 feet to the point of beginning.

(APN: 052-350-022)

**CUP 13-0044**

**052-440-006**

Parcel 1:



The South half of Tract 155, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: 052-440-006)

**CUP 13-0045**

**052-350-020**

Lot 35 in Section 34 *and* Lot 36 in Section 35, Township 16 South, Range 13 East, San Bernardino Base and Meridian, *and* that portion of Tract 293, Township 16 South, Range 13 East, San Bernardino Base and Meridian, , in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof, described as follows:

Commencing at the southeast corner of said Tract 292; thence South 89°53'00" West along said line of said Tract, 2,718.00 feet, more or less, to a point in the east bank of the irrigation canal; thence North 00°07'00" West 1,023.36 feet, more or less, to the center line of the county road marking the north boundary of the within described land; thence North 89°53'00" East along said center line of said county road, 1,625.00 feet to a point; thence North 75°29'00" East along said center line of said road, 234.00 feet to a point; thence North 42°47'00" East along center line of said road, 951.00 feet, more or less, to the line of the tract of land conveyed by I. W. Van Dorin and Henrietta Van Dorin to Herbert Potter and Lettie Potter, by deed dated May 20, 2008, recorded in Book 39, Page 33 of Deeds; thence South 66°05'00" East along center line of said county road and along said line of said Potter's land to a point in east line of said Tract 293, which point is also the southeast corner of the land conveyed as above to said Potter; thence South 00°07'00" East, along said east line of said Tract to the point of beginning.

(APN: 052-350-020)

**CUP 13-0046**

**052-350-001**

**Parcel 2:**

Tract 212, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: 052-350-001)

**052-350-001, 052-350-002, 052-350-004**

**Parcel 3:**

That portion of Tracts 97 and 293, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof, described as follows:

Parcels A, B, C and D of that certain survey on file in Book 10, Page 6 of Licensed Survey Maps, records of Imperial County.

(APN: 052-350-001; -002 and -004)

**052-350-003**

Those portions of Tracts 97 and 293, Township 16 South, Range 13 East, San Bernardino Base and Meridian, included within the following described boundaries:

Beginning at a point in the north line of the county road which is North 89°59'00" West, 279.30 feet and South 36°43'00" East, 341.50 feet from the southeast corner of said Tract 97, said point of beginning being the southeast corner of Parcel C as shown on a Licensed Survey Map on file in Book 10, Page 6; thence North 36°43'00" West, 1,286.90 feet; thence North 26°56'16" West, 387.87 feet; thence South 89°59'00" East, 401.75 feet; thence South 49°13'30" East, 594.21 feet to the northeast corner of Parcel Bas shown on said Survey Map; thence South 49°33'00" West, 242.80 feet; thence South 38°01'00" East, 1,023.70 feet to the north line of the county road; thence Westerly along the county road to the point of beginning.

(APN: 052-350-003)

**CUP 13-0048**

**052-440-005**

The East 2,655.00 feet of Tract 154, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in the unincorporated area of the County of Imperial, State of California, according to the Official Plat thereof.

(APN: 052-440-005)

**CUP 13-0049**

**052-440-003**

Parcel II:

The West 60 feet of Tract 154, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof, *lying* North of the Imperial Irrigation District Drainage Canal as located July 25, 1936.

(APN: 052-440-003)

**052-440-004**

Parcel I:

The North 20 feet of the West 2,625 feet of Tract 154, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: Portion of 052-

440-004) Parcel III:

The West 2,625 feet of Tract 154, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

Excepting therefrom, the North 20 feet thereof.

Also excepting therefrom, the West 60 feet thereof *lying* North of the Imperial Irrigation District Drainage Canal as located July 25, 1936.

(APN: Portion of 052-440-004)

**Attachment D**  
**DA Request from applicant**



February 7, 2023

Jim Minnick  
Director, Planning and Development Services  
County of Imperial  
801 Main Street  
El Centro, California 92243  
E-Mail: [JimMinnick@co.imperial.ca.us](mailto:JimMinnick@co.imperial.ca.us)

**RE: CED Wistaria Solar 2 DA Reissue Substantially Complete**

Dear Mr. Minnick,

I am pleased to inform you that the CED Wistaria Solar Project (formerly known as the Wistaria Ranch Solar Energy Center) draft Development Agreement (DA) reissue is now substantially complete and ready to be made available for the public hearing process.

RWE submitted a formal request on November 16, 2023 to extend the construction deadlines for the CUP/DA. Since then, RWE has been collaborating with the County of Imperial to provide the necessary analysis and engage in negotiations to ensure public benefits are adequately addressed.

The County and RWE have reached an agreement on all relevant terms except for the sole dollar amount due prior to the start of construction. This remains the only piece of negotiation left.

We look forward to continued collaboration and the successful reissuance of the DA.

If you need more information please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Cristina Gispert".

Cristina Gispert  
Director, Utility-Scale Development Region West

**RWE Clean Energy, LLC**  
101 West Broadway  
Suite 1120  
San Diego, CA 92101  
USA  
T +1-619-609-1803  
[www.rwe.com](http://www.rwe.com)

PC ORIGINAL PACKET



November 16, 2023

**VIA E-MAIL AND U.S. MAIL**

Jim Minnick  
Director, Planning and Development Service:  
County of Imperial  
801 Main Street  
El Centro, California 92243  
E-Mail: [JimMinnick@co.imperial.ca.us](mailto:JimMinnick@co.imperial.ca.us)

Re: CED Wistaria Solar Project – Request for Extension of Commencement of Construction Date of Certain Project Entitlements

Dear Jim:

RWE Clean Energy, LLC (“RWE”), successor-in-interest to Consolidated Edison Development, Inc. (“CED”), and its subsidiaries, including CED Wistaria Solar 2, LLC (“CED Wistaria 2”), is looking forward to continuing to work with you and the County of Imperial (“County”) during the ongoing development of the CED Wistaria Solar Project (formerly known as the Wistaria Ranch Solar Energy Center) (the “Project”) in accordance with the previously approved Project entitlements, including, but not limited to, the conditional use permits (“CUPs”) and development agreement as entered into with the County on December 30, 2014, effective as of February 26, 2015 and recorded August 10, 2015 in the County Recorder’s Office as Document No. 2015017224 (“Development Agreement”).

As you may remember, in 2020, CED has assigned certain Project-related interests to CED Wistaria 2 for development of “Phase 2” of the Project, including assignment of the Development Agreement, in part, and CUPs 13-0038 through 13-0046 and 13-0048 through 13-0049, in whole.

Pursuant to Section 6.1 of the Development Agreement and Section G-6 of the CUPs, development related to any of the CUPs must be commenced by the tenth (10<sup>th</sup>) anniversary of the effective date of the Development Agreement – or February 26, 2025. This correspondence is intended to request an extension of this deadline for the following Conditional Use Permits and Variances via an amendment to the relevant CUPs and Development Agreement, in accordance with the relevant Project entitlements and County of Imperial Code of Ordinances.

1. CUP 13-0038 & V 13-0004;
2. CUP 13-0039 & V 13-0005;
3. CUP 13-0040 & V 13-0006;
4. CUP 13-0041 & V 13-0007;
5. CUP 13-0042 & V 13-0008;
6. CUP 13-0043 & V 13-0009;
7. CUP 13-0044 & V 13-0010;
8. CUP 13-0045 & V 13-0011;
9. CUP 13-0046 & V 13-0012;
10. CUP 13-0048 & V 13-0014;
11. CUP 13-0049 & V 13-0015;

\*\*\*



Page 2

RWE would like to schedule a meeting with your office in order to formally initiate this process. Please let us know your availability in December 2023 to accommodate such a meeting.

Thank you for your time and attention to this matter. Please do not hesitate to contact me with any questions or concerns related to this request.

Sincerely,

A handwritten signature in black ink, reading "Cristina Gispert", is written over a horizontal line.

Cristina Gispert

Director, Utility-Scale Development Region West

RWE Clean Energy

101 West Broadway, Suite 1120, San Diego, CA 92101

Mobile: (619) 609-1803

E-mail: [Cristina.Gispert@rwe.com](mailto:Cristina.Gispert@rwe.com)

**RWE Clean Energy, LLC**

101 West Broadway  
Suite 1120  
San Diego, CA 92101  
USA

T +1-914-286-7700  
[www.rwe.com](http://www.rwe.com)

PC ORIGINAL PACKET

**Attachment E**  
**CEO Letter**



COUNTY EXECUTIVE OFFICE

**Miguel Figueroa**  
County Executive Officer  
[miguelfigueroa@co.imperial.ca.us](mailto:miguelfigueroa@co.imperial.ca.us)  
[www.co.imperial.ca.us](http://www.co.imperial.ca.us)



County Administration Center  
940 Main Street, Suite 208  
El Centro, CA 92243  
Tel: 442-265-1001  
Fax: 442-265-1010

February 6, 2025

Jim Minnick  
Planning & Development Services Director  
County of Imperial  
801 Main St.  
El Centro, CA 92243

Subject: Wistaria Ranch II Development Agreement

The Executive Office is providing formal notice that the proposed Wistaria Ranch II Development Agreement time extension draft document, which includes the negotiated points, has been substantially completed, allowing the Planning Director to deem the application complete for processing and make the draft DA available for public viewing. That said minor additional work is required to finalize the agreement.

The Executive Office is committed to collaborating closely with the developer, RWE Clean Energy, to address these outstanding matters and finalize the Development Agreement. Our goal is to bring the agreement to a point where it aligns with County requirements and is ready for approval by the Board of Supervisors.

We value the Planning Department's support and recognize the significance of this project. Should you have any questions about the Development Agreement please do not hesitate to contact the Executive Office.

Thank you for your attention and continued assistance on this matter.

Sincerely,

Miguel Figueroa  
County Executive Officer

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

PC ORIGINAL PACKET