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481 Fourth St., 2nd Floor
Hollister, CA 95023

~~Lombardo & Gilles~~, [Baker Botts](#) LLP
~~530 San Benito Street~~ [101 California](#), Suite ~~2023600~~
~~Hollister, CA 95023~~ [San Francisco, CA 94111](#)

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FIRST AMENDED DEVELOPMENT AGREEMENT BY AND BETWEEN

THE COUNTY OF SAN BENITO AND

PANOCH VALLEY SOLAR, LLC

~~SOLARGEN ENERGY, INC.~~

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FIRST AMENDED DEVELOPMENT AGREEMENT BY AND BETWEEN THE COUNTY OF SAN BENITO AND ~~SOLARGEN ENERGY, INC.~~ PANOCH VALLEY SOLAR, LLC (PANOCH VALLEY SOLAR FARM PROJECT)

THIS FIRST AMENDED DEVELOPMENT AGREEMENT (“**Agreement**”) is made and entered into on _____, ~~2010~~2017 by and between the County of San Benito, a political subdivision of the State of California (“**County**”) and ~~the SOLARGEN ENERGY, INC.~~PANOCH VALLEY SOLAR, LLC (“**Owner**”). County and Owner are sometimes herein referred to individually as a “**party**” and collectively as “**parties**.”

RECITALS

This Agreement is predicated on the following facts, which are incorporated into and made a part of this Agreement.

A. Capitalized Terms.

This Agreement uses certain terms with initial capital letters that are defined in Section 1 below. County and Owner intend to refer to those definitions when the capitalized terms are used in this Agreement.

B. Nature and Purpose of Development Agreements.

The Legislature enacted Government Code section 65864 *et seq.* (“**Development Agreement Statute**”) in response to the lack of certainty in the approval of development projects, which can result in a waste of resources, escalate the cost of development, and discourage investment in and commitment to planning that would maximize the efficient utilization of resources. The Development Agreement Statute is designed to strengthen the public planning process, to encourage private participation in comprehensive, long-range planning, and to reduce the economic costs of development. It authorizes a county to enter into a binding agreement with any person(s) having a legal or equitable interest in real property located in the county regarding the development of that property.

C. County’s Development Agreement Procedures.

Pursuant to the Development Agreement Statute, County adopted San Benito County Code Chapter 19.11, which sets forth procedures and requirements for the consideration of development agreements (“**County Development Agreement Procedures**”). This chapter enables County and a developer seeking County approval of a project to enter into a development agreement that vests certain rights and that requires a developer to provide certain public benefits beyond those that could otherwise be imposed as conditions of development.

D. Owner’s Interest in the Property.

The land and development governed by this Agreement consists of ~~the following: (1) 399~~an up-to 247 MW (Megawatt), or such smaller project as Owner chooses to develop on the property. solar power electric generation facility located on a footprint of ~~2,474~~up to

approximately 1,888 acres (including underground electrical conduits) ("**Facility**") of ~~an approximate~~ total ~~4,885~~2,506-acre project site ~~which also includes within its bounds a 2,411-acre open space and undeveloped habitat area~~ ("**Property**"). In addition, up to approximately ~~21,200~~26,118 acres located outside the boundaries of the Property ("**Potential Mitigation Lands**") are also subject to the provisions of this Agreement. ~~Together the~~The Property and ~~Potential Mitigation Lands are~~is described in Exhibit "A" and depicted in the map at Exhibit "B". Exhibit "C" and Exhibit "D" are hereby reserved. Owner has a legal interest in the Property and the Potential Mitigation Lands. The Property has been designated by the San Benito County Board of Supervisors ("**Board**") to be Agriculture Rangeland, which is a designation that provides for a solar power electric generation facility as a conditional use per San Benito County Code sections 25.07.005 and 25.29.106.

E. Development of the Property.

The County has prepared the Environmental Impact Report (State Clearinghouse No. 2010031008) ~~for~~related to the Project ("**Project EIR**" or "**EIR**"). Subsequently, the County has prepared the Supplemental Environmental Impact Report (State Clearinghouse No. 2010031008) related to the Project ("**Project SEIR**" or "**SEIR**"), which relates to the development of the Property with a solar farm as described more fully therein. Specifically, this Agreement relates to the development of ~~a 399~~an up to 247-MW project, referred to as the "Alternative A Revised Project" in the Project ~~EIR~~SEIR, which would be located on approximately ~~2,256~~1,888 acres within a fenced portion of the Property, and would involve the development of the following components:

- Installation of ~~three (3) to four (4)~~approximately one million PV panels
- PV module steel structural supports
- Electrical inverters and transformers
- Electrical substation with ~~switchyard~~switching station
- Buried electrical collection conduit
- Operation and maintenance (O&M) building
- Septic system and leach field
- ~~Wastewater treatment facility and demineralization pond~~
- On-site access roads
- Security fencing
- Transmission support towers and lines to interconnect with a PG&E transmission line
- Potential upgrades to PG&E's transmission system

Collectively, such development shall be known as the "**Project.**" Development of the Project would result in ~~a 2,411-acre~~ open space and undeveloped habitat area on the remaining portion of the Property. In addition, in connection with the Project, provisions for mitigation lands for three key species, the Blunt Nose Leopard Lizard ("**BNLL**"), San Joaquin Kit Fox ("**SJKF**"), and Giant Kangaroo Rat ("**GKR**") have been made.

F. Initial Project Approvals.

County has taken or intends to take various planning, land use entitlement and environmental review actions relating to the Project ("**Initial Approvals**") including, without limitation, the following:

1. Environmental Impact Report (Resolution No. 2010-18). On October 12, 2010, pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*), the CEQA Guidelines (14 Cal. Regs. § 15000 *et seq.*), and County's local Implementing Procedures for CEQA (collectively, "**CEQA**"), the Board took the following actions: (a) certified the Project EIR ("**EIR Certification**"); (b) adopted written findings relating to significant environmental impacts; (c) adopted a Statement of Overriding Considerations; and (d) adopted a mitigation monitoring and reporting plan (~~"MMRP"~~).

2. Williamson Act cancellation (Resolution No. 2010-19). On October 12, 2010, after a duly noticed public hearing, the Board approved Owner's application to cancel the Williamson Act contracts affected by Project development.

3. County Conditional Use Permit (~~Resolution No. _____~~). On October 20, 2010, the San Benito County Planning Commission ("**Planning Commission**"), after a duly noticed public hearing, approved and adopted Conditional Use Permit No. 1023-09. Thereafter, the matter was appealed to Board, which reviewed the Planning Commission record, received public comment at a ~~duly~~-a noticed public hearing and upheld the actions of the Planning Commission approving Conditional Use Permit No. 1023-09 on November 10, 2010.

4. Development Agreement (Ordinance No. _____862). On November 10, 2010, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board made the following findings with respect to the Agreement:

- (a) It was processed in accordance with the Development Agreement Statute.
- (b) It is consistent with the San Benito County General Plan, the EIR, any area plans and other applicable Rules, Regulations and Official Policies.
- (c) It is compatible with the uses authorized in, and the regulations prescribed for, the applicable zoning of the Property.
- (d) It will not adversely affect the orderly development of the surrounding community.
- (e) It is fair, just, and reasonable.
- (f) It is consistent with and best serves the public health, safety and general welfare of the County's citizens and good land use practice because, among other things, it provides for public benefits beyond those benefits that would be forthcoming through conditions of development project approvals as set forth herein.
- (g) It should be encouraged in order to meet important economic, social, environmental and planning goals of the County.

(h) It is consistent with the County's Development Agreement Procedures reflected in San Benito County Code, title 19, chapter 19.11, including, without limitation, procedures relating to the Agreement's duration. In summary, the Agreement provides for additional employment sites and opportunities within County, increases dedication of Open Space, conserves lands within County, and provides additional public benefit compensation in lieu of a dedication of land or construction of County infrastructure as specified in the County Development Agreement Procedures.

On this basis, ~~On~~ November 10, 2010, the Board adopted Ordinance No. ~~_____~~,862, approving and enacting ~~this~~the original Development Agreement ("**County DA Ordinance**"). ~~This~~The original Development Agreement ~~will become~~became effective on December 10, 2010 ("**Effective Date**").

5. County Conditional Use Permit (Resolution No. 2015-42). The Planning Commission, after a duly noticed public hearing, approved and adopted Conditional Use Permit No. 1023-09-A. Thereafter, the matter was appealed to the Board, which reviewed the Planning Commission record, received public comment at a duly noticed public hearing and upheld the actions of the Planning Commission approving Conditional Use Permit No. 1023-09-A on May 19, 2015.

6. Supplemental Environmental Impact Report (Resolution No. 2015-41). On May 19, 2015, pursuant to CEQA, the Board took the following actions: (a) certified the Project SEIR; (b) adopted written findings related to significant environmental impacts; (c) adopted a Statement of Overriding Considerations; and (d) adopted a mitigation monitoring and reporting plan ("**MMRP**").

G. Intent of Parties.

County and Owner have, in good faith, negotiated the terms and conditions of this Agreement, and have determined that use of a development agreement is appropriate for development of the Project in accordance with the Project Approvals. County desires to enter into this Agreement because it will eliminate uncertainty in planning and provide for the orderly development of the Property; it will ensure the maximum efficient utilization of resources within the County; it will provide for public benefits beyond those that otherwise could be imposed as conditions of approval; and it will otherwise achieve the goals and purposes of the Development Agreement Statute and the County's Development Agreement Procedures. In exchange for these benefits to County, together with the other public benefits derived from development of the Project, Owner desires to enter into this Agreement to receive the assurance that it may proceed with development of the Project in accordance with the Project Approvals, as set forth more fully below.

Additionally, this First Amendment Development Agreement is intended to resolve the parties' dispute over the County's receipt of sales and use tax revenue as provided by the original Development Agreement.

H. First Amendment to this Agreement.

This Agreement was first amended to, among other things, change the name of the Owner from Solargen Energy, Inc. to Panoche Valley Solar, LLC, which is the assignee of Solargen Energy, Inc.

I. Project Approvals as of Date of Execution.

The parties acknowledge that, as of the date of execution by each party of this First Amended Development Agreement, Owner has obtained and maintains all Project Approvals.

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants contained herein, Owner and County agree as follows:

AGREEMENT

Section 1. ~~Section 1~~ **Definition of Terms.**

The following defined terms are used in this Agreement:

- 1.1 **“Agreement”** means this First Amended Development Agreement between County and Owner. This Agreement also is sometimes referred to herein as “DA.”
- 1.2 **“Board”** means the San Benito County Board of Supervisors.
- 1.3 **“Building Permit”** refers to a document authorizing the holder to construct a building, as provided for in the San Benito County Code.
- 1.4 **“CEQA”** has the meaning set forth in Recital F(1).
- 1.5 **“Certificate of Occupancy”** means a final certificate of occupancy issued by County’s Building Official or, if County’s Building Code does not provide for the issuance of a certificate of occupancy for a particular structure, the functional equivalent thereto.
- 1.6 **“Conditional Use Permit”** has the meaning set forth in ~~Recital~~Recitals F(3) and F(5).
- 1.7 **“County”** means the County of San Benito, a political subdivision of the State of California.
- 1.8 **“County Development Agreement Procedures”** has the meaning set forth in Recital C.
- 1.9 **“County DA Ordinance”** has the meaning set forth in Recital F(4).
- 1.10 **“Days”** means calendar days. If the last day to perform an act under this Agreement is a Saturday, Sunday or legal holiday in the State of California, said act may be performed on the next succeeding calendar day that is not a

Saturday, Sunday or legal holiday in the State of California and in which the County offices are open to the public for business.

- 1.11 **“Decommission Fund”** is a fund to be established in the County Treasury to meet the obligations set forth in Section 3.6.
- 1.12 **“Development Agreement Statute”** has the meaning set forth in Recital B.
- 1.13 **“Development Impact Fee”** means any requirement of County in connection with a Project Approval for the dedication of land, the construction of public improvements, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment; facilities, services and infrastructure; or other public interests.
- 1.14 **“Dispute”** has the meaning set forth in Section 9.1.
- 1.15 **“EIR”** or **“Project EIR”** means the Panoche Valley Solar Farm Project EIR certified by the Board on October 12, 2010 by Resolution No. 2010-118, as set forth in Recital E. [“SEIR” or “Project SEIR” means the Panoche Valley Solar Farm Project Supplemental EIR as set forth in Recitals E and F\(6\).](#)
- 1.16 **“EIR Certification”** has the meaning set forth in Recital F(1).
- 1.17 **“Effective Date”** has the meaning set forth in Recital F(4).
- 1.18 **“Enforced Delay”** has the meaning set forth in Section 7.2(d).
- 1.19 **“Existing Rules”** means the Rules, Regulations and Official Policies in effect on the Effective Date.
- 1.20 **“Facility”** has the meaning set forth in Recital D.
- 1.21 **“Initial Approvals”** has the meaning set forth in Recital F.
- 1.22 **“JAMS”** has the meaning set forth in Section 9.1.
- 1.23 **“Legal Challenge”** has the meaning set forth in Section 11.15.
- 1.25 **“Local Contractor”** or **“Local Construction Worker”** means those contractors or construction workers having their primary place of business or permanent residence in San Benito County.
- 1.26 **“MMRP”** has the meaning set forth in Recital F(46).
- 1.27 **“New Rules”** has the meaning set forth in Section 3.3.
- 1.29 **“Notice of Default”** has the meaning set forth in Section 7.2(a).
- 1.30 **“Owner”** means ~~the SOLARGEN ENERGY, INC.~~ [PANOCHÉ VALLEY SOLAR, LLC](#) and all of ~~their~~[its](#) successors and assigns.

- 1.31 “**Periodic Review**” has the meaning set forth in Section 7.1.
- 1.32 “**PILOT**” has the meaning set forth in Section 2.8.2.
- 1.33 “**Planning Commission**” means the San Benito County Planning Commission.
- ~~1.33~~1.34 “**Planning Director**” means the head of the Planning and Building Departments and the Chief Planning Officer of San Benito County.
- ~~1.34~~1.35 “**Potential Mitigation Lands**” has the meaning set forth in Recital D.
- ~~1.35~~1.36 “**Project**” has the meaning set forth in Recital E.
- ~~1.36~~1.37 “**Project Approvals**” means the Initial Approvals and Subsequent Approvals, collectively.
- ~~1.37~~1.38 “**Project Infrastructure**” has the meaning set forth in Section 2.2.
- ~~1.38~~1.39 “**Project Land Use Plan**” denotes the location of Project components
- ~~1.39~~1.40 “**Project Revenues**” mean any and all revenues generated in connection with the Project, whether by property taxes, sales taxes, special taxes, special assessments or otherwise.
- ~~1.40~~1.41 “**Property**” has the meaning set forth in Recital D.
- ~~1.41~~1.42 “**Recorder**” means the San Benito County Recorder, which is responsible, in part, for recording legal documents that determine ownership of real property and other agreements related to real property.
- ~~1.42~~1.43 “**Regulatory Processing Fees**” means fees and charges adopted by County for the purpose of defraying County’s actual costs incurred or to be incurred in the processing and administration of any form of regulatory permit, license, land use entitlement, financing district or mechanism, permit or approval, or imposed by County to defray the costs of periodically updating its plans, policies, and procedures, including, without limitation, the fees and charges referred to in Government Code section 66014.
- ~~1.42~~1.44 “**Reimbursement Agreement**” means that ~~Agreement~~agreement entered into between the parties with the effective date of February 23, 2010, which governs the

_____ reimbursement and payment of costs and expenses associated with the Project.

1.431.45 “**Rules, Regulations and Official Policies**” means the County rules, regulations, ordinances, laws, EIRs, zoning and official policies governing development, including, without limitation, density and intensity of use; permitted uses; the maximum height and size of proposed buildings; the provisions for the reservation or dedication of land for public purposes or payment of fees in lieu thereof; the construction, installation and extension of public improvements; growth management; environmental review; and other criteria relating to development or use of real property and applicable to the Property.

1.441.46 “**Subsequent Approvals**” means any and all land use, environmental, building and development approvals, entitlements and permits required subsequent to the Effective Date in connection with development of the Project on the Property, including, without limitation, tentative and final subdivision maps, parcel maps and lot line adjustments; conditional use permits; design review approvals; building permits; grading permits; certificates of occupancy; approvals of financing districts or other financing mechanisms; and any amendments thereto.

1.451.47 “**Subsequent Landowner**” is a party who has acquired all or a portion of the Property from Owner. “**Subsequent Landowner**” shall not include a holder of a duly noticed security interest in Property or Project. Any Subsequent Landowner shall enter into an agreement with the County formally accepting assignment of this Development Agreement, including full performance of all obligations set forth herein, as set forth in Section 10 below.

1.461.48 “**Term**” has the meaning set forth in Section 6.1.

Section 2. ~~Section 2~~ Owner’s Obligations.

2.1 Development of the Project.

Development of the Project shall be consistent with: (a) this Agreement; (b) the San Benito County General Plan as it existed on the Effective Date; (c) the San Benito County Code as it existed on the Effective Date; (d) the Initial Approvals, including, without limitation, the **EIR/SEIR** and all conditions of approval (see Exhibit H and I); (e) the Subsequent Approvals, as and when they are issued, approved, or adopted, including all conditions of approval; and (f) all other applicable Existing Rules. Notwithstanding the foregoing, in the event of a conflict between any provision of this Agreement and any Project Conditional Use Permit, this Agreement shall control.

By May 31, 2018, Owner shall: (a) reconstruct one (1) contiguous mile of Little Panoche Road at the location and to the specifications as may be directed by the County

Resource Management Agency (not to exceed the specifications for a traffic index of 7); and (b) will pulverize the existing asphalt surface to a depth of two to four inches (based on the depth of the existing road surface) and compact such surface to provide the base for a two-inch overlay on Little Panoche Road from its intersection with Panoche Road to the Fresno County line (excluding the section reconstructed per provision (a) above). A consultant mutually agreeable to the parties will monitor this work and prepare a report of the work upon its completion. Not later than six (6) months after completion of construction of the Project, Owner will patch any potholes on Little Panoche Road from its intersection with Panoche Road to the Fresno County line, in accordance with the California Department of Transportation’s “Guidelines for Identifying and Repairing Localized Areas of Distress in AC Pavements Prior to Capital Preventive Maintenance or Rehabilitation Repairs,” attached as Exhibit K, but will not be required to perform any other work on Little Panoche Road. At decommissioning, County will evaluate the condition of Little Panoche Road to determine whether any work is needed to comply with Mitigation Measure TR-1.2 of the SEIR. County’s discretion shall be based on the reasonable recommendations by a neutral engineer, retained by County, the costs for which shall be reimbursed by Owner. Performance and completion of the work set forth in this paragraph implements and satisfies in toto the requirements of the first three bullet points and the last bullet point of Mitigation Measure TR-1.2 of the SEIR.

Nothing in this provision is in derogation of CEQA mitigation measures and other conditions of approval of the Project with respect to the portion of Little Panoche Road in the County of Fresno.

2.2 ~~2.2~~ County’s Reliance on Owner’s Provision of, or Contribution Towards, Project Infrastructure.

The parties acknowledge and agree that County’s approval of the Project is, in part, in reliance upon and in consideration of Owner’s payment of additional public benefit compensation and its contribution towards infrastructure, facilities, improvements, and services and amenities (including construction, operation (including personnel) and maintenance thereof) necessary to serve the Project, as described more fully in the ~~EIR~~SEIR and other Project Approvals (collectively, “**Project Infrastructure**”) in accordance with Owner’s obligations set forth herein.

2.3 ~~2.3~~ Provision of Open Space and Public Benefit.

~~(a)~~ (a) Owner shall conserve the “Potential Mitigation Lands”, defined in Recital D, which shall maintain the environmental quality and suitability of natural drainages, species habitat, including forage and range areas, and shall do so in the manner described more fully in the ~~EIR~~SEIR and Subsequent Approvals. The open space shall be located generally ~~as designated on attached Exhibits B and D (Maps of Property and Potential Mitigation Lands)~~ in accordance with the ~~EIR~~SEIR and any applicable Subsequent Approvals.

~~(b)~~ (b) County and Owner acknowledge and agree that the amount of required open space acreage under this Section 2.3 represents more than a 9:1 mitigation ratio for land which will be within the Project footprint, an amount that greatly exceeds the mitigation required by the FEIR.

2.4 ~~2.4~~—Design of Project Infrastructure.

Development of the Property, including, without limitation, the Project Infrastructure, shall be subject to final design review by County in accordance with the ~~EIR~~SEIR, Conditions of Approval, MMRP, and the San Benito County Code, as applicable. The Project Approvals, and all required improvement plans prepared in connection with the Project Approvals and in accordance with the ~~EIR~~SEIR, shall govern the design and scope of all Project Infrastructure to be constructed on or benefiting the Property.

2.5 ~~2.5~~—Provision of Permanent Employment; and Best Efforts to Employ Local Workers.

~~Development of the Project is anticipated to provide approximately one hundred fifty (150) to two hundred (200) jobs during the construction period and up to fifty (50) permanent jobs.~~ Owner understands and mutually supports the County's goal to increase available employment opportunities for permanent San Benito County residents. Owner shall use its best efforts to include in its construction and support services contracts a requirement that each contractor hiring employees for the Project include provisions that will require that they acknowledge the County's goal and give preference to hiring permanent San Benito County residents while still providing the contractor with the ability to hire as employees the job applicants with the most experience and best qualifications. To meet this goal Owner desires and will require its Engineering, Procurement, Construction Contractor (hereinafter EPC contractor) to use its best efforts to negotiate with the IBEW Local 234 and IBEW Local 332 (the "Unions") an agreement that includes the following local hire language:

1. Local hiring requirements that have the capacity to provide significant community benefits including possibly facilitating the financing and construction of the Panoche Valley Solar Farm Project ("Project"), creating significant construction job opportunities for residents of San Benito County and generate local tax revenue and other income to the County's residents.
- ~~2.2.~~2.2. A Policy to promote the betterment of the electrical industry in the San Benito County by creating opportunities for residents to participate in the jobs of the future in renewable energy and green technologies through targeted local hiring and training requirements applicable on the Project, is deemed by the Unions and the Owner, contractors or subcontractors to be needed and appropriate.
- ~~3.3.~~3.3. The goal of 100% local residents (living within the zip codes of San Benito County) working on the Project, subject to the skills and expertise needed to construct the Project in a manner that can achieve the ultimate financing of the Project by independent financial institutions.
- ~~4.4.~~4.4. The goal of generating significant local construction and related jobs from the Project, that includes (1) the creation of preferred hire zip code requirements; (2) the development of applicable job training programs; (3) the modification, if needed and as appropriate, of the dispatch procedures applicable to this Project; and (4) to provide for this Project these job classifications and

applicable ratios to support the Project: Journey-Level Electrician, Apprentice, and Solar Material Handler.

~~5.5.~~ The following approach for purposes of staffing the construction of the Project:

- Journey-Level Electrician and Apprentices. First priority shall be given to residents of San Benito County who are current members of the Unions. In the event there are not sufficient number of Journey-Level Electricians and Apprentices in the Unions living in San Benito County, the second priority shall be given to residents of adjoining counties.
- Solar Material Handler. Solar Material Handlers shall be hired primarily from a qualified pool of residents living in San Benito County, subject to the appropriate training by the Unions and the contractors and subcontractors, in conjunction with community partners such as Gavilan College and related institutions.

~~6.6.~~ The “scope of services” for a Solar Material Handler shall be the following:

Installs racks and modules, and the handling of all of the material involved with the panels, trackers, modules, supports, and the mounds of cardboard that are generated during the installation.

7. For the use of Union labor on entire Project, the ratio of Solar Material Handlers to Journey-Level Electricians and Apprentices shall be not less than 1:1.
8. Any labor contracts reached by the EPC contractor or any subcontractors shall be enforceable under the terms of the labor contracts, and not under this Agreement.
9. If there is any conflict between provisions of the labor contracts applicable to the Project and the provisions of this Agreement, the terms of the labor contracts will govern.

Owner also agrees to sponsor, in an effort to increase awareness of available job opportunities related to the Project and meets its obligations hereunder, two (2) job fairs in San Benito County to be conducted by the County through the One Stop Career Center to inform and educate local citizens about employment opportunities and training available through the Project. Owner shall use its best efforts to require in the aforesaid contracts a provision requiring the contractors to collaborate with the County in the job fairs to accomplish the County’s goal of increasing employment opportunities for permanent residents of San Benito County.

2.6 ~~2.6~~ **Habitat Conservation.**

Owner shall provide offsite mitigation for habitat conservation in the manner set forth in the Project [EIR/SEIR](#)’s Mitigation Measures. County agrees that provision of this offsite

mitigation shall be in lieu of payment otherwise due by Owner under the County's Habitat Conservation Mitigation Fee (Chapter 19.19 of Title 19 of the San Benito Code).

2.7 ~~2.7~~ Mitigation and Reporting Expenses.

The cost for all staff time required to fulfill the County's responsibilities under the MMRP, and to monitor Property Owner's compliance with the MMRP shall be reimbursed by Owner within 30 days of the issuance of a written invoice. Staff performing all monitoring, or other work, required by the FEIR shall be approved by the County Planning Director. Monitoring may be performed by a qualified County employee, by a County-retained consultant, and/or a County-approved consultant as may be determined in the sole discretion of the County Planning Director after consultation with Owner.

2.8 ~~2.8~~ Additional Public Benefit Compensation.

In lieu of a dedication of land and/or construction of County infrastructure such as fire stations, libraries, police facilities and other similar infrastructure contemplated in San Benito County Ordinance Section 19.11.003(B)(5) as additional public benefits, Owner shall provide the following additional public benefit compensation to the County: This Agreement recognizes that the Project ultimately developed may be less than 247 MW, but will be at least 123 MW. The parties agree that the additional public benefit compensation provided in this Section 2.8 reflects the level of public benefit compensation commensurate with the development of the Project to 247 MW, despite the project potentially being built at less than a full 247 MW on-site.

2.8.1 ~~2.8.1~~ Owner shall exert in good faith its best efforts to have all sales and use tax occur in the County, and also use its best efforts to direct its ~~Contractors~~contractors and subcontractors to have sales and use tax occur in the unincorporated area of the County. Owner and its general contractor shall establish a business location or locations and sales tax resale account~~permits~~, and take other reasonable steps, in an effort to maximize receipt of sales and use tax revenues for County. Notwithstanding the specific requirements of this Section 2.8.1, Owner may exercise its good-faith judgement to structure its contracts and purchasing arrangements to effectuate the intent of this section, and any deviation from the requirements of this section as a result thereof shall not constitute a breach of this Agreement, provided such deviations do not materially reduce the amount of local sales and use tax revenue that County would otherwise receive. Owner shall provide written notice and an opportunity to comment to the County Counsel and shall consider any comments of the County Counsel in good faith before deviating from the requirements of this section as provided in the previous sentence.

Owner shall include in its master contract and any other contract for construction, entered into after the effective date of this First Amended Development Agreement, language ensuring that County will receive the benefit of any sales or use tax generated by the Project to the fullest extent legally permitted.

~~Owner will state in all construction contracts that pursuant to California Board of Equalization, Regulation 1806(b) which states in part:~~

~~The jobsite is regarded as a place of business of a construction contractor or subcontractor and is the place of sale of "fixtures" furnished and installed by contractors or subcontractors. The place of use of "materials" is the jobsite. Accordingly, if the jobsite is in a county having a state administered local tax, the sales tax applies to the sale of the fixtures, and the use tax applies to the use of the materials unless purchased in a county having a state administered local tax and not purchased under a resale certificate.~~

Jobsite shall be stated in all agreements, the master contract and all subcontracts entered into after the effective date of this First Amended Development Agreement as Panoche Valley, San Benito County, California.

Owner shall direct its general contractor to establish a place of business within the unincorporated area of the County and to obtain a sales tax construction sub-permit for the project site. Owner, which may enter into joint venture, or other relationship with contractor, supplier, or designer, will establish a subsidiary place of business entity and sales tax permit within the unincorporated area of San Benito County to and shall take first possession there of any goods on which sales or use taxes are applicable; ~~not defined by above-cited Regulation 1806 and shall include in its Requests for Bid that are not transferred to it under the master contract with its general contractor.~~

After the effective date of this First Amended Development Agreement, all requests for bids, procurement contracts, bid documents, and any other agreement whereby California ~~Sales~~ sales or ~~Use Taxes~~ use tax may be incurred, shall state that the sales or resale occurs ~~at that place of business within~~ in Panoche Valley, San Benito County, California. The principal negotiations for ~~all~~ resales of such ~~sales~~ goods are to be carried on in San Benito County.

Alternately, any entity which may sell goods on which sales taxes are applicable may establish their own place of business within unincorporated San Benito County where delivery is ultimately made to Owner. The principal negotiations for all such sales to Owner are to be carried on in San Benito County.

~~Owner will provide notice to all out of state suppliers of goods and equipment, no matter where originating, that San Benito County is the jurisdiction where the first functional use of the property is made.~~ shall self-assess use tax on all items purchased for the Project from out of state suppliers that are subject to use tax.

~~2.8.2. For the term of this Agreement and while Owner is exempt from paying property tax on the value of the fixture improvements and equipment installed on the Property to produce renewable, solar energy, Owner shall remit to County's General Fund fourteen percent of one percent (.14%) of the assessed value of the Property exempt under the State of California Revenue and Taxation Code.~~

~~This additional public benefit compensation shall be paid to the County each year. The additional public benefit compensation amount shall be calculated annually each January 1st (assessment date) based on the valuation of the unassessed portion of the solar power electric generation facility. The valuation shall be determined annually as of January 1st by the San Benito County Assessor's Office. Owner is required by law under Revenue & Taxation Code Section 441 to annually file a Business Property Statement with the Assessor's Office and is responsible to report the entire cost of the Project as of January 1st and provide any necessary documentation requested by the Assessor. Failure to file an annual Business Property Statement shall result in an estimated value of the property as of the January 1st assessment date. The information provided on the annual BPS will be subject to audit pursuant to Revenue & Taxation Code Section 469.~~

~~The value of the unassessed portion shall be given to the Auditor's Office. This additional public benefit compensation shall be paid annually and is due and payable on August 31st to the County Auditor. Payment received after August 31st shall be charged a late payment penalty equal to ten percent (10%) of the amount due and owing and shall accrue interest at the rate of 1.5 percent (1.5%) per month or the legal rate of interest, whichever is less.~~

~~The compensation agreement contained in this Section 2.8.2 shall exist as long as the property tax exclusion under Revenue & Taxation Code Section 73 for newly constructed active solar power electric generation facilities or under any other applicable statute is provided. If Owner's solar power electric generation facility is sold or transferred to a Subsequent Landowner triggering a change in ownership pursuant to the applicable provisions of the Revenue and Taxation Code, including but not limited to Sections 60-69.5 for property reassessment, the property tax exclusion that applies only to the original owner shall be removed and the Subsequent Landowner of the Facility shall be subject to a one hundred percent (100%) valuation and taxation of the entire Property pursuant to Revenue & Taxation Code §§60-69.5 and §73 and under any other applicable statute provided. The provisions of this Section 2.8.3 shall be null and void if the Subsequent Landowner is required to pay property tax on the entire Property at the time of purchase and for subsequent years. If changes are made to the law which allows the Subsequent Landowner to receive a property tax exclusion for the Facility, then the provisions of this Section shall remain in effect and apply to any Subsequent Landowner.~~

2.8.1.1. Owner guarantees that it and its vendors, contractors, and subcontractors shall collectively remit a minimum of four million two hundred fifty thousand dollars (\$4,250,000) of sales and use tax to the California Department of Tax and Fee Administration ("DTFA") attributable to the following components of the State-wide sales and use tax rate imposed with respect to construction of the Project: 1% county operations fund, 0.25% county transportation fund, 1.0625% 2011 local revenue fund, 0.5% 1991 local revenue fund, and 0.5% local public safety fund (the "**Guaranteed Tax Amount**"). Owner shall remit, or cause to be remitted, the Guaranteed Tax Amount to the DTFA on or before June 30, 2018.

The Guaranteed Tax Amount shall only include amounts that Owner and its vendors, contractors, and subcontractors properly source or otherwise attribute to County on applicable California sales and use tax returns filed with the DTFA. The parties recognize that for various reasons County may not receive taxes reported and

remitted in this manner. The Guaranteed Tax Amount shall not include taxes that the County fails to receive because the DTFA reallocates the taxes to another jurisdiction (e.g., due to a petition for reallocation by another local jurisdiction or a sourcing correction made on audit). The Guaranteed Tax Amount shall include those taxes that the County fails to receive for any other reason outside of Owner's (including its contractors', subcontractors', and vendors') control, including by way of example: administrative charges by the DTFA, offset by the State of California for County debts, changes in state law or policy, changes in tax rates or state funding from sales tax revenue, and appropriation of local tax revenue by the State of California.

If County does not receive the full Guaranteed Tax Amount by September 30, 2018, Owner shall make a payment-in-lieu-of tax to County in an amount equal to the difference between the Guaranteed Tax Amount and total sales and use tax revenue County has received through September 30, 2018 with respect to construction of the Project (the "**Tax Shortfall Payment**"). The Tax Shortfall Payment shall be deposited in the County's general fund to be used as the County may determine. Owner shall make the Tax Shortfall Payment within 30 days of receipt for demand thereof, subject to the limitations and dispute resolution provisions set forth in the remainder of this section.

If during the four quarters subsequent to September 30, 2018, DTFA reallocates any part of the Guaranteed Tax Amount to another jurisdiction, the Tax Shortfall Payment shall be recalculated taking into account the tax reallocation. If the recalculation increases the amount of the Tax Shortfall Payment, Owner shall make a subsequent payment-in-lieu-of tax to County in an amount equal to such increase (the "**Subsequent Tax Shortfall Payment**"). The Subsequent Tax Shortfall Payment shall be deposited in the County's general fund to be used as the County may determine. Owner shall make the Subsequent Tax Shortfall Payment within 30 days of receipt for demand thereof, subject to the limitations and dispute resolution provisions set forth in this section.

If after September 30, 2018, County believes, on the basis of its review of official records received from DTFA, that it has not received the full Guaranteed Tax Amount and is therefore entitled to a Tax Shortfall Payment, County shall provide all such records (which it is lawfully able to produce) to Owner and meet and confer with Owner about its concerns for at least 30 days before sending a demand to Owner or taking any public action with respect to those concerns. In the course of these discussions, Owner shall bear the burden of establishing that the amounts in issue were remitted to the DTFA and that County was designated as the applicable local jurisdiction, by providing (i) its sales tax returns, (ii) third-party sales tax returns, and, to the extent third-party tax returns are unavailable, (iii) a schedule of such contractors, subcontractors, and vendors listing the tax amounts purported to have been remitted and allocated to County. County shall be responsible for obtaining taxpayer-specific records from the DTFA to enable it to verify receipt of amounts listed on the schedule provided by Owner.

In addition, County, as a party to tax reallocation petition proceedings, shall bear the burden of establishing that amounts it failed to receive were the result of a reallocation of taxes by the DTFA to another local jurisdiction due to a petition for reallocation by another local jurisdiction or a sourcing correction made on audit.

If County demands a Tax Shortfall Payment from Owner, and Owner disagrees with the amount of or the necessity for a Tax Shortfall Payment, County and Owner shall jointly select and retain a neutral nationally known accounting firm (such as Deloitte & Touche, Ernst & Young, etc.) (“Outside Auditor”), to determine whether a Tax Shortfall Payment is required under the standards of this First Amended Development Agreement, and if so, the amount thereof. The parties shall be bound by the decision of the Outside Auditor. If the Outside Auditor determines that Owner is required to make an increased Tax Shortfall Payment, Owner shall make such payment within 30 days of receiving the Outside Auditor’s report. The parties shall each directly pay one half of all costs and fees invoiced by the Outside Auditor, but Owner shall reimburse County for its one-half share of such costs and fees.

Owner shall reimburse County for the reasonable expenses County incurs in obtaining a quarterly report by HdL Companies as to the amount of sales tax received each quarter, until September 30, 2018 within 30 days of an invoice for those costs, documenting the amount to be reimbursed.

2.8.1.2. Owner shall also pay County two million five hundred thousand dollars (\$2,500,000) to compensate County for any sales and use tax revenue that may be foregone as a result of Owner constructing a Project of less than 247 MW. Owner shall pay this amount to the County Auditor no later than five (5) business days after this First Amended Development Agreement is recorded. This amount shall be separate and not included in the Guaranteed Tax Amount specified above.

~~**2.8.2** ——— The obligations of this Section 2.8.2 shall survive termination of the agreement and shall continue in full force and effect. The obligations of this paragraph shall terminate twenty (20) years after the start of construction of Phase 1. Owner shall provide notice to the County of the start of construction of Phase 1 of the Project. During Project construction in property tax years 2017 and 2018 and for a term of twenty (20) years thereafter (commencing with the 2019 property tax year), Owner shall remit an annual payment-in-lieu-of tax (“PILOT”) to the County Auditor. The PILOT amount for each year of construction and the twenty-year term is provided in the schedule attached to this Agreement as Exhibit J. The PILOT amounts reflect the parties’ estimate of the amount of ad valorem tax revenue that would have been imposed on fixtures and equipment incorporated into a 247 MW Project but for the exclusion for solar energy systems provided in California Revenue and Taxation Code Section 73, and the parties acknowledge and agree that such PILOT amounts shall be in full satisfaction of all PILOT obligations due for the Project, as initially constructed and/or revised in the future, up to and including 247 MW. The amount of each annual PILOT shall be reduced by the amount of ad valorem property tax, if any, assessed by the County for such tax year on Project fixtures and equipment (excluding land and Project fixtures and equipment that did not qualify for the exclusion for solar energy systems under California Revenue and Taxation Code Section 73 as in effect on the date of the execution of this First Amended Development Agreement). In each year of the term, Owner shall remit the PILOT by August 31. Payments received after August 31 shall be charged a late payment penalty equal to ten percent (10%) of the amount due and owing and shall accrue interest at the rate of ten percent (10%) per annum or at the legal rate of interest, whichever is less. The obligations of this Section 2.8.2 shall survive termination of the Agreement and shall continue in full force and effect.~~

During the term of this Agreement, (i) Owner and any Subsequent Landowner shall remain subject to property tax laws with respect to the Project, including obligations to pay property taxes imposed on the Project under applicable law and to file property tax statements, and (ii) County shall retain all of its statutory rights to administer property taxes with respect to the Project. This Agreement shall not be construed as a present or future exemption or abatement of property taxes on the Project.

~~2.8.3~~ ~~2.8.3~~—Additionally, Owner agrees to pay an amount determined by the County, which amount shall not exceed fifty- thousand dollars (\$50,000) to be used at County’s discretion for solar energy demonstration and improvements to a County-owned facility or facilities or for other uses as determined by the County (“Additional Community Benefit Payment”). The Additional Community Benefit Payment shall be due and payable ~~prior to issuance of any building permits for Phase 2 of the Project. In the alternative, Owner may choose to make the improvements itself once the nature of the improvements have been determined by County. In this event, Owner shall provide materials and labor necessary to install the improvements and obtain all necessary approvals, including all necessary CEQA compliance, as determined by County and required under applicable law. Any proposed improvements shall be reviewed and approved by the County Public Works Director. Owner agrees to comply with any prevailing wage, bidding, and/or construction standards determined necessary by County and required under applicable law. In addition, Owner shall pay an additional twenty five thousand dollars after completion of Project construction to be used to improve a County-owned facility or facilities~~within 30 days of the effective date of this First Amended Development Agreement, if not already paid.

~~2.8.4~~ ~~2.8.4~~—Property Owner will develop a program after completion of phase 1 of the project, which shall include, but not be limited to, designating a liaison, to facilitate and coordinate college/university level students or faculty to visit the Project site for educational and/or research purposes. Property Owner shall allow students and researchers reasonable access to project site to perform research on the Project site, subject to appropriate indemnification from the visiting entity/individual/groups, and subject to such reasonable rules and restrictions as Property Owner may establish to ensure visitor safety and protection from interference with Project Operations. Any disputes about implementation of this provision shall be subject to the dispute resolution procedures established by this Agreement. The intent of this section is to ensure that college and universities will be allowed reasonable access to the Project site for educational and research purposes. Owner will also make Project reasonably available for elementary, middle and high school educational field trips subject to above-listed qualifications. Property Owner shall not be responsible for funding such programs.

Section 3. ~~Section 3~~ Owner’s Vested Rights.

3.1 ~~3.1~~—Vested Right to Develop the Project.

Owner shall have the right to develop the Property with the Project in accordance with this Agreement and other Project Approvals. The parties acknowledge and agree that Subsequent Approvals will be required to fully implement the Project. County shall process and consider any application for a Subsequent Approval related to the Project in accordance with the Existing Rules. The permitted uses of the Property; the density and intensity of such uses; the maximum height and size of proposed buildings; the provisions

for the reservation or dedication of land for public purposes or payment of fees in lieu thereof; the construction, installation and extension of public improvements; and the development standards and design guidelines shall be as set forth in the Project Approvals.

3.2 ~~3.2~~—Development Impact Fees and Regulatory Processing Fees.

~~(a)~~ (a) Owner shall pay all Development Impact Fees, as identified below (“**Development Impact Fees**”) and in the amount in effect on the Effective Date, and shall also pay any indexed increases of those identified fees; provided, however, that Owner shall not be required to pay any Development Impact Fees newly established after the Effective Date.

~~(b)~~ (b) County agrees that Owner’s payment of all Development Impact Fees due in accordance with this Section 3.2 shall be due and payable at issuance of the Certificates of Occupancy rather than at issuance of the Building Permit. The parties further agree that the amount of said fees owed shall be calculated as of the date of issuance of any Building Permit.

The County has identified the following Development Impact Fees as the fees applicable to the Project and that shall be paid in accordance with this Section 3.2:

Fire Equipment: \$0.25 / SF of all Covered Space
Public Works Equipment: \$0.38 / SF of all Covered Space (Non-Residential)

~~(c)~~ (c) Owner shall pay all Regulatory Processing Fees and any fees or required Project permits approved by the Planning Commission and/or the Board that are made part of the Project’s conditions of approval in accordance with Section 5 of the Reimbursement Agreement between the parties, the terms of which are incorporated herein by this reference and in accordance with Section 3.3 below.

3.3 ~~3.3~~—Application of Subsequently Enacted Rules, Regulations and Official Policies.

County may adopt new or modified Rules, Regulations and Official Policies after the Effective Date (“**New Rules**”); provided, however, such New Rules shall be applicable to the Project or the Property only to the extent that such application will not modify, prevent or impede development of the Project on the Property or conflict with any of the vested rights granted to Owner under this Agreement. Any New Rules shall be deemed to conflict with Owner’s vested rights if they seek to limit or reduce the density or intensity of development of the Project; or to limit the timing of the development of the Project, either with specific reference to the Property or as part of a general enactment that applies to the Property. Notwithstanding the foregoing, County shall not be precluded from applying any New Rules to the Project or Property under the following circumstances, where the New Rules are: (i) specifically mandated by changes in state or federal laws or regulations adopted after the Effective Date as provided in Government Code section 65869.5; (ii) specifically mandated by a court of competent jurisdiction; (iii) changes to the Uniform Building Code or similar uniform construction codes, or to County’s local construction standards for public improvements so long as such code or standard has been adopted by County and is in effect on a County-wide basis; (iv) 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 (v) new or increased Regulatory Processing Fees so long as such fees are applied to all development projects on a County-wide basis.

3.4 ~~3.4~~ Modification or Suspension by State or Federal Law.

In the event that state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provision(s) of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Notwithstanding the foregoing, the remainder of this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

3.5 ~~3.5~~ CEQA.

Owner acknowledges that implementation of the Project will require County's consideration and approval of applications for Subsequent Approvals and that County will complete environmental review in connection with those Subsequent Approvals as required by CEQA and other applicable federal, state and local laws and regulations. County's environmental review of the Subsequent Approvals pursuant to CEQA shall utilize the Project ~~EIR~~SEIR to the fullest extent permitted by law; provided, however, nothing in this Agreement shall be deemed to limit the legal authority of County to conduct any environmental review required under CEQA or other applicable laws and regulations.

3.6 ~~3.6~~ —Decommissioning Agreement.

County wishes to protect itself and its citizens in the event Owner, or its successors or assigns, cannot complete the expected twenty (20) year Project life span, cease on-going business operations, or abandon the Project and/or the Property for whatever reason. Owner agrees to establish, and make payments into, a Decommission Fund ~~according to the time line and table set forth in attached Exhibit E. However the parties recognize that the amounts set forth in Exhibit "E" are an illustration only of the dollar amount of the payments that will be made to the County. Actual payments, Payments will be based on the number of megawatts installed and the dates those megawatts are installed, ~~for the purposes of determining actual payments to the decommission fund.~~ For each phase, payments to the Decommission Fund shall commence five years after that phase's completion, except if a later scheduled phase of the project has not been completed within two years from the completion of the phase which immediately precedes it. In this case, payment to the Decommission Fund shall be immediately commenced and shall be due the next August 31st. ~~If the Project does not proceed pursuant to the timetable set forth in Exhibit "E", the parties shall meet in good faith to amend Exhibit "E" in the manner that most closely effectuates the intent of Exhibit "E" based upon the timetable of actual development of the Project.~~~~

It is the intent of this Section 3.6 that the Decommission Fund along with the residual value of installed improvements will provide sufficient financial assurances for County to decommission the Project and fully restore the Property. If Owner, its successors or assigns, do not properly decommission the Project or restore the Property to its original condition within a reasonable time following the cessation of business operations or the abandonment of the Project or Property for whatever reason, then the County may use the Decommission Fund to perform the decommission and/or restoration. If the Decommission Fund is not adequate to fully decommission the Project or restore the Property, the Owner, its successors, or assigns shall be liable for any amount expended by the County over the Decommission Fund balance. The term "reasonable time" as used herein shall mean no more than six (6) months after the County notifies the Owner, its successors, or assigns in writing that decommission of the Project and/or restoration of the Property is required. The funds shall be held in a sequestered account and shall be used by the County only for the decommissioning of the Project or the restoration of the Property. To the extent that the Owner, its successors, or assigns decommission the Project and/or restore the Property to the County's satisfaction, which shall not be unreasonably withheld, the sequestered funds, or any unused portion thereof, shall be returned to the current Owner or its designee. The Decommission Fund recommendations have been based on a study conducted by Pacific Gas and Electric for California Public Utilities Commission, as set forth in the Supplemental Testimony presented July 15, 2009, pursuant to the July 1, 2009 AC and ALJ Ruling, in reference to Application 09-02-019, identified as Exhibit No. PG&E-3, relevant portions of which are attached as Exhibit F.

Each payment to the Decommission Fund, ~~as set forth in Exhibit E,~~ is due and payable on August 31st of the applicable year to the County Auditor. Payment received after August 31st will be charged a late payment penalty equal to ten percent (10%) of the amount due and owing and will accrue interest at the rate of 1.5 percent (1.5%) per month or at the legal rate of interest, whichever is less.

In conformity with the PG&E study set forth above, a sum of \$26,500 per MW installed shall be paid (adjusted in accordance with the Consumer Price Index ("CPI") as set forth below) into the Decommission Fund, which amount shall be fully adjusted for inflation. Every five years, Owner will provide an updated cost estimate of decommissioning costs, which estimate shall be prepared by a firm approved by the Planning Director. The reasonable and actual costs of the cost estimate may be reimbursed to Owner from the Decommission Fund. Upon receipt of the cost estimate showing the need for increased contribution, including but not limited to the need to increase the Decommission Fund due to inflation greater than 2% per year, the Owner shall immediately increase annual contributions by 1/5 of the deficit amount so that the Decommission ~~fund~~Fund is fully funded according to cost estimate received within five years. If Owner disagrees with the cost estimate, Owner may obtain its own cost estimate, and the parties shall submit the issue of the amount needed for the Decommission Fund for resolution in accordance with the provisions of Section 9 of this Agreement. However, in no event may the Decommission Fund be adjusted to less than \$26,500 per MW, adjusted for inflation at 2% per year.

The Decommission Fund shall be held in the County Treasury, in an account dedicated only for the purposes set forth in this Agreement. All interest earned by deposits within the Decommission Fund shall accrue to the Decommission Fund and be used only for the purposes set forth in this Agreement.

Should the Project be repowered or continue to exist on the property after termination of this ~~agreement~~Agreement, the Decommission Fund shall continue to be held in the County Treasury for the purposes set forth in this ~~agreement~~Agreement until the Property is fully restored to its natural and existing condition, and the remediation has been approved in writing by the County.

The obligations under this Section 3.6, including but not limited to 5 year annual reviews for adequacy of the Decommission Fund, shall survive the termination of this Agreement, and shall cease only upon full decommissioning of the project and restoration of the Property to its original condition, which restoration shall be approved by the County.

3.7 ~~3.7~~ — **Timing of Development.**

The parties acknowledge that Owner cannot at this time predict when, or at what rate the Project will be developed. Such decisions depend upon numerous factors that may not be within Owner's control, such as market demand, interest rates, absorption, transmission capacity, completion and other similar factors. Owner and County agree that Owner shall have the right to develop the Project in such order, at such rate, and at such times as Owner deems appropriate within its exercise of subjective business judgment, subject only to any timing or phasing requirements set forth in the ~~EIR~~SEIR, this Agreement, and Subsequent Approvals.

3.7.1 ~~3.7.1~~ — **Phasing of Mitigation with Project.**

Mitigation may be phased with Project construction as set forth in the ~~EIR~~SEIR with the ratios set forth as required in the ~~EIR~~SEIR. To the extent that this Section 3.7.1 does not conflict with any portion of the ~~EIR~~SEIR, mitigation lands may be

established by conservation easement in the same percentage of the Project under development in each phase of the Project. For example, if development of ~~399~~247 MW proceeds in five phases of 20 MW, ~~100~~50MW, ~~100~~50MW, ~~100~~50MW, and ~~79~~77 MW, the total number of acres of mitigation lands may be established at ~~5.0~~8.1 percent for the first phase, and ~~25.4~~20.2% for phases two through four, and ~~19.7~~31.3% for phase 5.

If the size of the Project is reduced, the timing to provide the required percentage of mitigation land shall be adjusted to reflect the amount of MW developed during each phase of the Project. However the Project modifications may only occur after all necessary approvals are obtained and compliance with CEQA occurs, if additional CEQA compliance is triggered by the modifications sought. County may require greater amounts of mitigation lands for any individual phase (up to the total established in the EIRSEIR) upon a finding that the additional lands are needed to mitigate the effects of the Project. In no event shall the phasing plan described by this Section 3.7.1 result in less mitigation lands being established for each phase as required by the EIRSEIR and as necessary to mitigate specific impacts of the development as determined by on-going pre-construction surveys and on-going mitigation monitoring.

3.8 ~~3.8~~ — Regulation by Other Public Agencies.

It is acknowledged by the parties that other public agencies not within County's control may possess authority to regulate aspects of the development of the Property, and this Agreement does not limit such authority of other public agencies.

Section 4. ~~Section 4~~ Cooperation.

4.1 ~~4.1~~ — Owner's Application for Subsequent Approvals.

Owner shall be obligated to obtain any and all required Subsequent Approvals to develop the Project. Owner shall apply for such approvals in a timely manner. Owner's obligations under this Section 4.1 apply to those approvals that are under County's jurisdiction and also to those approvals that may be required by other governmental or quasi-governmental agencies having jurisdiction over the implementation of any aspect of the Project (including, without limitation, the Department of Transportation; agencies having jurisdiction over boundary changes or district formation, flood control, sewer service, water service or fire protection; and agencies having jurisdiction over air quality, biological resources, solid wastes and hazardous wastes and materials).

4.2 ~~4.2~~ — County's Processing of Subsequent Approvals.

County shall cooperate and diligently work to promptly process and consider all applications for Subsequent Approvals, provided they are in a proper form and include payment of any applicable fees and provided that Owner is in compliance with this Agreement. In the event that County and Owner mutually determine that additional personnel or outside consultants need to be retained to assist County to expeditiously process any Subsequent Approval, the cost of any such personnel or consultants shall be paid by Owner but shall be under the direction of County. County shall retain its discretion in its consideration of any and all Subsequent Approvals but shall exercise that discretion in a manner consistent with the EIRSEIR and this Agreement.

~~Section 5~~

County agrees that reduction of the Project to less than 247 MWs shall not require a revised conditional use permit, or any revisions to, or amendments of, any other County Subsequent Approval, or County reviews (including any California Environmental Quality Act reviews).

Section 5. Effective Date of Development Agreement.

~~This agreement~~The effective date of the original Development Agreement is the Effective Date specified in Section 1.17. This First Amended Development Agreement shall be in effect upon the effective date of the ordinance approving this agreement~~First Amended Development Agreement.~~

Section 6. ~~Section 6~~ Term of This Agreement.

6.1 ~~6.1~~ Duration of Agreement.

The term of this Agreement shall commence on the Effective Date and shall continue for a period of twenty (20) years ("**Term**") unless extended or sooner terminated as provided herein in accordance with County's Development Agreement Procedures. Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except as otherwise provided in this Agreement. Termination shall not affect any right or obligation arising from the Project Approvals.

6.2 ~~6.2~~ Extension by Agreement.

The Term may be extended at any time before its termination date by the mutual agreement of the parties in writing and in accordance with County's Development Agreement Procedures.

Section 7. ~~Section 7~~ Periodic Compliance Review; Default.

7.1 ~~7.1~~ Periodic Compliance Review.

County shall review Owner's good faith compliance with the terms of this Agreement on an annual basis ("**Periodic Review**"). This Periodic Review shall be conducted in accordance with the Development Agreement Statute and the County's Development Agreement Procedures, and shall address all items set forth therein as well as specifically demonstrate Owner's compliance with its obligations under Section 2.5 and 2.8.1 above, this Agreement as a whole, any conditions of approval, and the MMRP. Owner shall reimburse County for the actual costs of preparing for and conducting the Periodic Review within thirty (30) days of written demand from County.

In the event County elects to terminate this Agreement pursuant to the provisions of Section 7.2(b) below, Owner, in accordance with Section 9 below, may challenge such termination. If arbitration proceedings are initiated pursuant to Section 9, the arbitrator shall

exercise his or her review based on substantial evidence as to the existence of cause for termination.

7.2 ~~7.2~~ Default.

~~(a)~~ **(a) Notice of Default.** Failure or unreasonable delay by County or Owner to perform any material provision herein shall constitute a default under this Agreement. In the event of a default, the party alleging such default shall give the defaulting party not less than thirty (30) days' written notice of default ("**Notice of Default**"), unless the parties extend such time by mutual written consent or except in cases where Owner's default presents a threat of imminent harm to the public; provided, however, failure or delay in giving a Notice of Default shall not waive a party's right to give future notice of the same or any other default. The Notice of Default shall specify the nature of the alleged default and the manner and period of time in which said default may be satisfactorily cured. The time of the Notice of Default shall be measured from the date actually delivered in accordance with Section 11.11 below.

~~(b)~~ **(b) Cure Period; Right to Terminate or Initiate Arbitration Proceedings.** The defaulting party shall provide evidence establishing it was never, in fact, in default or shall cure the default within thirty (30) days; provided, however, that if the nature of the alleged default is such that it cannot be reasonably cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period. During any period of curing, the party charged shall not be considered in default for purposes of terminating this Agreement or instituting arbitration proceedings. If the default is cured, then no default shall exist or be deemed to have existed and the noticing party shall take no further action. After proper notice and the expiration of such 30-day cure period without cure the Dispute Resolution procedures set forth in Section 9 below shall apply to determine whether a breach has occurred sufficient to warrant termination of this Agreement.

~~(c)~~ **(c) Remedies Generally.** The parties agree that remedies to enforce the terms of this Agreement shall be limited to actions for mandamus, specific performance, injunctive relief, declaratory relief, or other equitable relief, and that neither party shall be liable for monetary damages. Either party may seek equitable relief prior to resorting to the Dispute Resolution procedures set forth in Section 9 below to preserve the status quo pending the completion of the Dispute Resolution process. Notwithstanding the foregoing, County reserves the right to seek payment from Owner in any arbitration proceedings initiated in conformity with Section 9.2 below for any fees, charges, costs or other monies, including, but not limited to the payment of the Additional Public Benefit Compensation owed under this Agreement, and to obtain recovery thereof. It is the intent of the parties to this Agreement that any disputes arising out of this Agreement be resolved in conformity with the terms and condition of Section 9 below. Therefore, to that end, the parties agree to waive the application of San Benito County Code section 19.11.011 (B) to any dispute arising over the modification or termination of this Agreement for non-compliance with its terms and conditions. The ordinance approving this Agreement shall reflect the parties' intentions contained in this Section and shall waive the applicability of San Benito County Code Section 19.11.011(B) to this Agreement.

The parties agree that if a default by Owner of its obligations under this Agreement is found to exist by an arbitrator pursuant to the provisions of Section 9.2 below the County may begin proceedings to revoke the Project's Conditional Use Permit due to Owner's failure to comply with the conditions of approval if Owner does not remedy the default within thirty (30) days of the issuance of the written decision by the arbitrator, or within the number of days that the arbitrator may determine reasonable to cure the default.

~~(d)~~ (d) **Enforced Delay; Extension of Time of Performance.** No party shall be deemed in default of its obligations under this Agreement where a delay or default is due to an act of God, natural disaster, accident, breakage or failure of equipment, enactment of conflicting federal or state laws or regulations, third-party litigation, strikes, lockouts or other labor disturbances or disputes of any character, interruption of services by suppliers thereof, unavailability of materials or labor, rationing or restrictions on the use of utilities or public transportation whether due to energy shortages or other causes, war, civil disturbance, riot, or by any other severe and unforeseeable occurrence that is beyond the control of that party (collectively, "**Enforced Delay**"); provided, however, the parties agree a delay that results solely from unforeseen economic circumstances shall not constitute an Enforced Delay for purposes of this Section 7.2(d). Performance by a party of its obligations under this agreement shall be excused during, and extended for a period of time equal to, the period (on a day-for-day basis) for which the cause of such Enforced Delay is in effect.

Section 8. ~~Section 8~~ Termination.

8.1 ~~8.1~~—Termination ~~upon~~Upon Completion of Project or Expiration of Term.

This Agreement shall terminate upon the expiration of the Term (plus any extensions mutually agreed upon in accordance with Section 6.2 above). Upon termination of this Agreement, the County Recorder may cause a notice of such termination in a form satisfactory to County Counsel to be duly recorded in the official records of San Benito County.

8.2 ~~8.2~~—Termination by Mutual Consent.

This Agreement may be terminated by mutual consent of the parties in the manner provided in the County Development Agreement Procedures under section 19.11.011 (A).

Section 9. ~~Section 9~~ Dispute Resolution.

9.1 ~~9.1~~—Informal Resolution of Disputes; Mediation.

If a dispute arises related to the interpretation or enforcement of, or compliance with, the provisions of this Agreement ("**Dispute**"), County and Owner shall first attempt to resolve it through informal discussions. In the event a Dispute cannot be resolved in this manner within twenty one (21) days, County and Owner shall endeavor to settle the Dispute by mediation. The Dispute shall be submitted to the San Jose, California office of Judicial Arbitration and Mediation Services, Inc. ("**JAMS**") for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS for final binding arbitration

pursuant to Section 9.2 below. Either County or Owner may commence mediation by providing to JAMS and the other party a written request for mediation setting forth the subject of the Dispute and the relief requested. County and Owner shall cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals and in scheduling the mediation proceedings. If the parties cannot agree on the appointment of the mediator or the date of the mediation within thirty (30) days after the written request for mediation has been received, then JAMS shall appoint the mediator at its discretion and/or set a mediation date. County and Owner agree to participate in any such mediation in good faith, and shall share equally in its costs. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by either of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process.

9.2 — ~~9.2~~ **Arbitration.**

~~(a)~~ (a) Either County or Owner may initiate arbitration with respect to a Dispute by filing a written demand for arbitration at any time following completion of the informal dispute resolution and mediation processes described above; provided however, that mediation may continue after the commencement of arbitration, if County and Owner so desire. Unless otherwise agreed to by County and Owner, the mediator shall be disqualified from serving as the arbitrator in the case. The provisions of this Section 9.2 may be enforced by any court of competent jurisdiction, and the prevailing party shall be entitled to an award of all costs, fees, and expenses, including attorneys' fees, to be paid by the non-prevailing party. Any Dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, not resolved by the mediation process set forth above, shall be determined by arbitration to be held in San Benito County before one arbitrator. Neither party may request an arbitration hearing in conformity with this Section 9.2 until after the completion of informal dispute resolution and mediation processes under Section 9.1 are complete; provided, however, that mediation may continue after the commencement of arbitration if County and Owner so mutually desire. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures, which rules shall govern the commencement of arbitration and the selection of the arbitrator among other things. Judgment on the arbitration award may be entered in the San Benito County Superior Court or any court having jurisdiction. This Section 9.2 shall not preclude County or Owner from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The costs and fees of arbitration (including those fees and expenses set forth in JAMS' fee schedule in effect at the time of commencement of the arbitration) shall be borne equally by County and Owner, and each side shall be responsible for its own attorney(s) and expert(s) witness fees.

~~(b)~~ (b) The dispute resolution process described under Sections 9.1 and 9.2(a) above shall be undertaken in good faith. A mediator or arbitrator other than JAMS may be mutually agreed upon by County and Owner in writing. By agreeing to this dispute

resolution process, neither County nor Owner hereby loses or waives its right to assert the operation of any applicable statute of limitations as an affirmative defense. Any arbitration award shall be final and binding upon County and Owner and each shall accept such decision and award as binding and conclusive and shall abide thereby and neither party may commence civil litigation as a means of resolving a Dispute except for an action to obtain equitable relief.

9.3 ~~9.3~~—Attorneys’ Fees and Dispute Resolution Costs.

Subject to Sections 9.1 and 9.2 above, in which each side shall be responsible for paying its own attorney’s fees and costs for mediation or arbitration proceedings, in any further action or proceeding brought by any party to enforce or interpret a provision of this Agreement, or to seek injunctive relief or declaratory relief against any other party to this Agreement, the prevailing party is entitled to recover reasonable attorneys’ fees and any other costs incurred in the action or proceeding in addition to any other relief to which it is entitled.

Section 10. ~~Section 10~~—Assignment and Assumption of Obligations.

10.1 ~~10.1~~—Assignment of Rights, Interests and Obligations.

Owner may sell, assign, or transfer in whole or in part the Property to any Subsequent Landowner at any time during the Term of this Agreement without County’s consent so long as the Subsequent Landowner executes an Assignment and Assumption Agreement in accordance with Section 10.2 below. Upon any public notification of the sale, transfer, or assignment of the Property, Owner shall provide concurrent notice to the County.

10.2 ~~10.2~~—Assumption of Rights, Interests and Obligations in Writing Only.

Express written assumption by a Subsequent Landowner of the obligations, responsibilities and duties of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred, in accordance with the provisions of this Section 10.2, shall relieve Owner of such obligations so expressly assumed. The Subsequent Landowner shall execute an Assignment and Assumption Agreement in a recordable form, in which it assumes all obligations, responsibilities and duties of Owner with respect to this Development Agreement as it relates to the Subsequent Landowner’s acquisition of all or a portion of the Property. The parties agree that if the Subsequent Landowner executes an agreement in substantially the same form as attached Exhibit G, this shall be sufficient to satisfy the obligations in this Section 10. This Assignment and Assumption Agreement shall take effect upon Subsequent Landowner’s acquisition of all or a portion of the Property. In the event the Subsequent Landowner executes an Assignment and Assumption Agreement that is not in substantially the same form as Exhibit G, then any such agreement shall be in a recordable form and shall be approved as to form by County Counsel prior to any such agreement taking effect.

The County Recorder shall duly record any such Assignment and Assumption Agreement in the official records of San Benito County within ten (10) days of receipt.

Upon recordation of said assumption agreement, Owner shall automatically be released from those obligations assumed by the Subsequent Landowner.

Section 11. ~~Section 11~~ General Provisions.

11.1 ~~11.1~~—Independent Contractors.

Each party is an independent contractor and shall be solely responsible for the employment, acts, omissions, control and directing of its employees. All persons employed or utilized by Owner in connection with this Agreement and the Project shall not be considered employees of County in any respect. Except as expressly set forth herein, nothing contained in this Agreement shall authorize or empower any party to assume or create any obligation whatsoever, express or implied, on behalf of any other party or to bind any other party or to make any representation, warranty or commitment on behalf of any other party.

11.2 ~~11.2~~—Invalidity of Agreement and Severability of Provisions.

If this Agreement in its entirety is determined by a court or arbitrator to be invalid or unenforceable under State law, this Agreement shall automatically terminate as of the date of final entry of judgment or the arbitrator's written decision, including any appeals. In this event, the parties agree to negotiate in good faith and to enter into a new Development Agreement which would most closely match the expressed intent of this Agreement without the portion(s) of this Agreement that was determined by the court or arbitrator to cause the Agreement to be invalid or unenforceable. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, the remaining provisions shall continue in full force and effect.

To the extent that any provision of this Development Agreement differs or conflicts with Chapter 19.11 of the San Benito County Code, this Development Agreement which shall be adopted by ordinance shall control, and shall not be invalidated by any such conflict.

11.3 ~~11.3~~—Further Documents.

Each party shall execute and deliver to the other party all other instruments and documents as may be reasonably necessary to carry out the purpose of this Agreement in order to provide or secure to the other party the rights and privileges granted by this Agreement.

11.4 ~~11.4~~—Time of Essence.

Time is of the essence in the performance of each and every covenant and obligation to be performed by the parties hereunder.

11.5 ~~11.5~~—Modifications.

This Agreement may be modified from time to time by mutual consent of the parties, in accordance with the County Development Procedures contained in San Benito County Code Section 19.11.011 (A). In the event the parties modify this Agreement,

the County Recorder shall cause notice of such action to be duly recorded in the official records of San Benito County within ten (10) days of such action.

11.6 ~~11.6~~—Subsequent Approvals Do Not Require Amendment.

County's approval of any Subsequent Approval shall not require an amendment to this Agreement except in the event and to the extent Owner expressly seeks and County approves such amendment in connection with Subsequent Approval(s). Upon County's approval of any Subsequent Approval, it shall become part of the Project Approvals governing development of the Project covered by this Agreement.

11.7 ~~11.7~~—Project is a Private Undertaking.

The parties agree that: (a) any development by Owner of the Property shall be a private development; (b) County has no interest in or responsibilities for or duty to third parties concerning any improvements constructed in connection with the Property; (c) the contractual relationship between County and Owner is such that Owner is an independent contractor and not an agent of County; and (d) nothing in this Agreement is intended or shall be construed to create or reflect any form of partnership or joint venture between the parties.

11.8 ~~11.8~~—No Discrimination Permitted.

Owner shall not discriminate in any way against any person on the basis of race, color, national origin, sex, marital status, sexual orientation, age, creed, religion, or condition of physical disability in connection with or related to the performance of this Agreement.

11.9 ~~11.9~~—Covenants Running with the Land.

Subject to Section 10 above, all of the provisions contained in this Agreement are binding upon and benefit the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or any portion of the Property, whether by operation of law or in any manner whatsoever, during their ownership of the Property, or any portion thereof. All of the provisions of this Agreement constitute covenants running with land pursuant to California law, including, without limitation, Civil Code section 1468.

11.10 ~~11.10~~—Recordation of Agreement.

Within ten (10) days of the Effective Date, the County Recorder shall cause this Agreement to be duly recorded in the official records of San Benito County.

11.11 ~~11.11~~—Notices.

Any notice required under this Agreement shall be in writing and personally delivered, or sent by certified mail (return receipt requested and postage prepaid), overnight delivery, or facsimile to the following:

County: San Benito County ~~Planning and Building Department~~[Resource Management Agency](#)
Attn: ~~Planning~~ Director
~~3224 Southside Road~~[2301 Technology Parkway](#)
Hollister, CA 95023
Telephone: (831) 637-5313
Fax: (831) 637-5334

Copy to: County Counsel's Office
Attn: County Counsel
481 4th Street, 2nd Floor
Hollister, CA 95023
Telephone: (831) 636-4040
Fax: (831) 636-4044

~~Owner: SOLARGEN ENERGY, INC.~~
~~Attn: Michael Peterson~~
Copy to: County Administrative Office
Attn: County Administrative Officer
481 Fourth St.,
Hollister, CA 95023
(831) 636-4000, ext. 10

Owner: PANOCHE VALLEY SOLAR, LLC
Attn: James J. Dixon
c/o ConEdison Development
~~-20400 Stevens Creek Blvd.~~ 100 Summit Lake Drive, Suite 740 210
~~Cupertino, CA 95014~~ Valhalla, NY 10595
~~(925) 998-9928~~
~~Fax (925) 886-8175~~

Copy to: ~~Law Offices of Lombardo & Gilles,~~ BAKER BOTTS LLP
Attn: ~~Bradley W. Sullivan, Esq.~~
~~530 San Benito~~ Chris Carr
101 California Street, Suite 201
~~Hollister~~ 3600
San Francisco, CA 95023 94111
Telephone: ~~(831) 630-1755~~ (415) 291-6208
Fax: ~~(831) 630-5935~~ (415) 373-2720

Notices to Subsequent Landowners shall be given by County as required above only for those Subsequent Landowners who have given County written notice of their addresses for the purpose of receiving such notices. Any party may change its mailing address/facsimile at any time by giving written notice of such change to the other party in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the earlier of the date personal delivery is effected or on the delivery date or attempted delivery date shown on the return receipt, air bill or facsimile.

11.12 ~~11.12~~ **Prevailing Wage.**

Owner shall be solely responsible for determining whether construction of any or all of the improvements required in connection with the Project trigger the obligation to pay prevailing wages under California or federal law. In the event and to the extent that payment of prevailing wages is required, Owner shall comply with those requirements. Owner shall defend, indemnify and hold harmless County, its agents, employees, officers and officials from any claims, injury, liability, loss, costs or damages sought by a third party for a failure to pay prevailing wages in connection with the Project. The indemnification obligation set forth in this Section 11.12 shall survive the termination of this Agreement.

11.13 ——— ~~11.13~~ **Applicable Law.**

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

11.14 ——— ~~11.14~~ **Venue.**

Any action brought relating to this Agreement shall be held exclusively in a state court in the County of San Benito.

11.15 ——— ~~11.15~~ **Cooperation in the Event of Legal Challenge; Indemnification.**

Owner shall defend, indemnify, and hold harmless the County, its agents, employees, officers, and officials from any claims, injury, liability, loss, costs or damages sought by a third party against the County challenging the validity of this Agreement, any provision hereof, or any Project Approval, or relating to any personal injury, death, or property damage, arising from Owner's operations or those of its employees, officers, agents, contractors or subcontractors, which relate to the Project (collectively referred to as "**Legal Challenge**"). It is understood that Owner's duty to indemnify and hold harmless includes the duty to defend as set forth in California Civil Code Section 2778. The provisions of Section 4 of the Reimbursement Agreement between the parties, which are incorporated herein by this reference, shall govern the defense of any Legal Challenge as defined herein. Acceptance by County of insurance certificates and endorsements required under this Agreement does not relieve Owner from liability hereunder. The provisions of this Section 11.15 shall survive the termination of this Agreement.

11.16 ——— ~~11.16~~ **No Waiver.**

No waiver by any party of any provision of this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a party of any right or remedy provided in this Agreement or provided by law shall not prevent the exercise by that party of any other remedy provided in this Agreement or under the law.

11.17 ——— ~~11.17~~ **Construction.**

This Agreement has been reviewed and revised by legal counsel for both County and Owner, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. The provisions of this Agreement and the attached exhibits shall be construed as a whole according to their common meaning and not strictly for or against any party, and in a manner that shall achieve the purposes of this Agreement. Wherever required by the context, the masculine gender shall include the feminine or neuter genders, or vice versa.

11.18 ——— ~~11.18~~ **Entire Agreement.**

This Agreement and all exhibits hereto constitute the entire agreement between the parties and supersede all prior discussions, negotiations, and agreements whether oral or

written. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by both parties.

11.19 ——— ~~11.19~~ Estoppel Certificate.

Any party from time to time may deliver written notice to the other party requesting written confirmation that, to the knowledge of the certifying party: (a) this Agreement is in full force and effect and constitutes a binding obligation of the parties; (b) this Agreement has not been amended either orally or in writing, or if it has been amended, specifying the nature of the amendment(s); and (c) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature of the default. A party receiving a request shall execute and return the certificate within thirty (30) days after receipt thereof. The Planning Director shall have the right to execute any certificate requested by Owner. At the request of Owner, the certificate provided by County establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and Owner shall have the right to record the certificate for the affected portion of the Property at its cost.

11.20 ~~11.20~~ No Third Party Beneficiaries.

The terms and provisions of this Development Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors and assigns, and is made solely and specifically for their benefit. No other person or entity shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

11.21 ——— ~~11.21~~ Counterparts.

This Agreement and any and all amendments thereto may be executed in counterparts, and all counterparts together shall be construed as one document.

11.22 ——— ~~11.22~~ Authority to Execute.

Each party hereto expressly warrants and represents that it has the authority to execute this Agreement on behalf of its entity and warrants and represents that it has the authority to bind its entity to the performance of its obligations hereunder.

11.23 ——— ~~11.23~~ Captions.

The caption headings provided herein are for convenience only and shall not affect the construction of this Agreement.

11.24 ——— ~~11.24~~ Listing and Incorporation of Exhibits.

The exhibits to this Agreement, each of which is hereby incorporated herein by reference, are as follows:

Exhibit A: Legal Description of Property

Exhibit B: Map of Property

Exhibit C: ~~Legal Description of Potential Mitigation Lands~~[Reserved](#)

Exhibit D: ~~Map of Potential Mitigation Lands~~[Reserved](#)

Exhibit E: ~~Table and Funding Timeline of Decommission Fund~~[Reserved](#)

Exhibit F: PG&E Decommissioning Planned Costs

Exhibit G: Form of Assignment and Assumption Agreement

Exhibit H: Conditions of Approval

Exhibit I: Mitigation Measures (MMRP)

Exhibit J: [Schedule of PILOT Payments](#)

Exhibit K: [California Department of Transportation Guidelines for Identifying and Repairing Localized Areas of Distress in AC Pavements Prior to Capital Preventive Maintenance or Rehabilitation Repairs](#)

COUNTY OF SAN BENITO

~~Gary Armstrong~~ John Guertin,
Director of ~~Planning and Building-~~
~~Services~~ Resource Management Agency
Date:

~~MATTER~~ APPROVED AS TO FORM:
San Benito County Counsel's Office

~~MODIFICATON TO PVSE USE PERMIT~~

Barbara Thompson
Acting Assistant County Counsel
Date:

~~SOLARGEN ENERGY, INC.~~
PANOCH VALLEY SOLAR, LLC

By:

Its: President and Chief Executive Officer
Date:

Exhibit A

Legal Description of Property

Exhibit B

Map of Property

Exhibit C

~~Legal Description of Potential Mitigation Lands~~

RESERVED

Exhibit D

Map of Potential Mitigation Lands

RESERVED

Exhibit E

~~Table and Funding Timeline of Decommission Fund~~

RESERVED

Exhibit F

PG&E Decommissioning Planned Costs

Exhibit G

Form of Assignment and Assumption Agreement

Exhibit H:

Conditions of Approval

~~Approval of the project was granted on the following conditions of approval and once the Ordinance approving the Panoche Valley Solar Farm Project Development Agreement is adopted, the Planning Director is authorized to execute the Development Agreement, subject to the conditions of project approval, for and on behalf of the County of San Benito:~~

~~1. Standard Conditions:~~

- ~~1. **Hold Harmless:** Upon written notice by the County, the permittee shall defend, indemnify and hold harmless San Benito County and its agents, officers and employees from any claim, action or proceeding against San Benito County or its agents, officers or employees to attack, set aside, void or annul the approval of this Use Permit and any applicable proceedings. San Benito County reserves the right to prepare its own defense. [Planning]~~
- ~~2. **Conformity to Plan:** The development and use of the site shall conform substantially to the proposed site plan and Conditions of Approval as approved by the Planning Commission. Any increase, change, or modification in the nature or intensity of the land use on the site shall be subject to further Planning Commission review and approval. [Planning]~~
- ~~3. **Compliance Documentation:** The applicant shall submit a summary response in writing to these Conditions of Approval documenting compliance with each condition, including dates of compliance and referencing documents or other evidence of compliance. [Planning]~~
- ~~4. **Encroachment Permit:** Pursuant to Section 14-3 of the San Benito County Code, prior to commencement of any improvements associated with this project, the applicant shall obtain a Public Works Encroachment Permit for any work being performed within the County right of way.~~
- ~~5. **Fire:** The project shall meet the standards set forth in the latest adopted editions of the 2007 California Fire Code, San Benito County Ordinances 822 and 823, Public Resources Codes 4290 and 4291 and all other related codes as they apply to a project of this type and size.~~
- ~~6. **Lighting Plan:** Prior to operation and as part of the building permit submittal, the applicant owner shall submit an exterior/security and safety lighting plan. All exterior lighting for new development shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off site glare is fully controlled. All fixtures shall comply with County Code Chapter 19.31 (along with the requirements of Zone III regulations set within Chapter 19.31 of the County Code). The exterior lighting plan shall indicate the location, type, and wattage of all proposed lighting fixtures and include catalog sheets for each fixture. [Planning]~~

- ~~7. **Yearly Permit Compliance Review:** Each year, Planning Staff and other County staff (as necessary) shall conduct yearly site visits to ensure that all conditions of approval are being met and all approved plans and programs are being enforced. Site visits are subject to a fee per Ordinance 833.~~
- ~~8. **Sign Ordinance:** Prior to operation, any signs used shall be required to meet the County's Sign Ordinance.~~
- ~~9. **Mitigation Monitoring:** All mitigation monitoring shall be funded by the applicant. All mitigation monitoring shall be performed by either County Staff or other qualified personnel who is solely responsible to the County of San Benito.~~
- ~~10. **Mitigation Measures:** All Mitigation Measures are hereby established as Conditions of Approval. (See Exhibit I)~~
- ~~11. **Development Agreement.** Execution of a development agreement, as recommended by the Planning Commission, or as modified by the Board of Supervisors, and full compliance with the terms thereof, shall be an express condition of approval of this conditional use permit.~~

Exhibit I

Mitigation Measures (MMRP)

|
|
[Exhibit J](#)

[Schedule of PILOT Payments](#)

Exhibit K

California Department of Transportation
Guidelines for Identifying and Repairing Localized Areas of Distress in
AC Pavements Prior to Capital Preventive Maintenance or Rehabilitation Repairs