

Attachment D

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ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA PURSUANT TO CHAPTER 18.62 OF THE MONTEREY COUNTY CODE, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE COUNTY OF MONTEREY AND CALIFORNIA FLATS SOLAR, LLC, FOR THE CALIFORNIA FLATS SOLAR PROJECT.

County Counsel Summary

This ordinance would approve and authorize the execution of a development agreement between the County of Monterey and California Flats Solar, LLC related to the development of a 280 Megawatt solar energy facility on approximately 3,000 acres located in the southeastern corner of unincorporated Monterey County, approximately seven miles southeast of Parkfield. The proposed solar energy facility requires issuance of a use permit from the County. If the solar energy facility is permitted and if the ordinance is adopted, the development agreement would vest the right of the project applicant to develop the project under the County's land use regulations currently in effect and would provide the County with public benefits beyond those required by conditions of the use permit approval, including a guarantee of at least three million dollars in revenue to the County. California Government Code sections 65864-65869.5 and Chapter 18.62 of the Monterey County Code authorize the County to enter into development agreements with persons having legal or contractual interests in real property for the development of the property. Government Code section 65867.5 and Section 18.62.12 of Chapter 18.62 of the Monterey County Code require that any such development agreement be approved by ordinance.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. PURPOSE AND BACKGROUND

1. The purpose of this ordinance is to approve and authorize the Chair of the Board of Supervisors of the County of Monterey to execute a Development Agreement ("Development Agreement") between the County and California Flats Solar, LLC, a California limited liability company ("Owner") in connection with Owner's development of a 280 Megawatt solar energy facility (the "Project"). The Development Agreement is attached to this ordinance as **Exhibit 1**.
2. The Development Agreement relates to the development of that certain real property consisting of approximately 2720 acres of land located in the southeastern corner of unincorporated Monterey County, approximately seven miles southeast of Parkfield, within the South County Area Plan area, more particularly described in Exhibit A to the Development Agreement ("the Land").

3. Owner, California Flats Solar, LLC, has a legal and contractual interest in the Land because Owner has an option to lease the Land from the Hearst Corporation (“Landowner”). The Land consists of portions of legal lots of record owned by Landowner. The Land and Landowner’s property are depicted on the map attached as Exhibit B to the Development Agreement.
4. As an entity having a legal or equitable interest in the property, the Landowner is entering the Development Agreement for the limited purposes of acknowledging the existence of the Development Agreement, permitting recordation of the Development Agreement on the Land, and agreeing to certain specified terms of the Development Agreement, as set forth in Schedule 3.6 of the Development Agreement.
5. Owner is a wholly owned subsidiary of First Solar, Incorporated. First Solar is entering the Development Agreement for the limited purpose of agreeing to certain financial guarantees, as set forth in Exhibit H of the Development Agreement.
6. The proposed Project consists of a 280 Megawatt solar generating facility including: photovoltaic (PV) solar modules, two substations (approximately 6 acres each), a switching station (approximately 6 acres), a 4,000 square foot operations and maintenance building, an approximately 155 acre utility corridor, other infrastructure needed to serve the proposed project and grading of approximately 880,000 cubic yards of cut and 880,000 cubic yards of fill.
7. On February 10, 2015, the Board of Supervisors certified a Final Environmental Impact Report (FEIR) for the California Flats Solar Project (SCH #2013041031) (Resolution No. _____) and granted development approvals, including a Use Permit for the Project (Resolution No. _____), subject to conditions of approval (“Conditions of Approval”). California Flats Solar, LLC proposes to develop the Property in accordance with the terms and conditions of the Development Agreement, the Use Permit and other development approvals.
8. Pursuant to California Government Code sections 65864-65869.5 and Chapter 18.62 of the Monterey County Code, the County may enter into development agreements with persons having legal or contractual interests in real property for the development of the property, provided the Board of Supervisors makes the findings required by Government Code section 65867.5 and Monterey County Code section 18.62.120. Government Code section 65867.5 and Monterey County Code section 18.62.12 require that any such development agreement be approved by ordinance. The purpose of the Development Agreement is to provide certainty to Owner regarding the County rules and regulations that will govern Project development for the term of the Development Agreement while providing to the County public benefits beyond those that could otherwise be imposed as conditions of development.

SECTION 2. FINDINGS

The Board of Supervisors hereby makes all of the findings required by section 18.62.120 of the Monterey County Code. Specifically, the Board of Supervisors finds as follows:

1. The Development Agreement is consistent with the 2010 Monterey County General Plan, including the South County Area Plan. On October 26, 2010, the Board of Supervisors of the County of Monterey ("County") adopted the 2010 Monterey General Plan ("General Plan") which is applicable to the non-coastal area of the County, including the area where the Project is located. The General Plan includes a South County Area Plan containing supplemental policies applicable to the area where the Project is located. The Development Agreement is consistent with the Monterey County General Plan and South County Area Plan ("the Plans") because, under the land use designations of the General Plan, the Project is a use allowed with a use permit which the Board of Supervisors has granted. Furthermore, the Development Agreement contains certain public benefits which further advance objectives of the Plans and which could not have been obtained in the absence of the Development Agreement.
2. The Development Agreement complies with the Subdivision Map Act. Although the Land is a leasehold consisting of portions of legal lots of record, no subdivision map is required because the Subdivision Map Act does not apply to the leasing of land "in conjunction with the financing, erection, and sale or lease of a solar electrical generation device on the land, if the project is subject to review under other local agency ordinances regulating design and improvement or, if the project is subject to other discretionary action by the advisory agency or legislative body." (Government Code section 66412(l)). The Project to which this Development Agreement relates has been subject to discretionary review by the County Planning Commission and Board of Supervisors and has been granted a Use Permit by the Board of Supervisors.
3. The Development Agreement is in the public interest. The Development Agreement, among other public benefits, guarantees to the County three million dollars in revenue associated with the purchase of supplies. The Development Agreement also provides for financial assurances with respect to decommissioning of the facility and restoration of the Land when the use ceases. The Development Agreement provides certainty to the Owner by vesting the right of the Owner to develop the project under the County's land use regulations currently in effect but does not limit the authority of the County to apply changes which are mandated by changes to state and federal law that are inconsistent with the Agreement or to impose requirements necessary to protect persons or property from conditions dangerous to public health or safety.
4. The Development Agreement provides public improvements and benefits that would not otherwise be obtained through other applicable development approval processes. Those public benefits include the following:

- A. Owner guarantees that a minimum of three million dollars (\$3,000,000) in revenue associated with the purchase for the Project of materials, equipment, fixtures, or other items upon which sales or use tax is due will be paid to the County.
 - B. Owner agrees to work with the community of Parkfield to provide seventy-five thousand dollars (\$75,000) to the community for purposes of establishing a local library.
 - C. Owner agrees to work with California Department of Forestry and Fire Protection (CAL FIRE) to provide adequate fire and emergency services for the construction and operation of the project.
 - D. Owner agrees to repair damage to County roads, if any, caused by Project construction vehicles.
 - E. Owner promises to make efforts to employ local workers, including participating in County job fairs and establishing a shuttle park-and-ride location in the County for the workforce.
- 5. The Development Agreement is consistent with all of the requirements of Chapter 18.62 of the Monterey County Code, except as otherwise specifically provided herein.
 - 6. The County has reviewed and processed the Development Agreement in accordance with the requirements of Chapter 18.62. On January 14, 2015, the Monterey County Planning Commission held a duly noticed public hearing to consider the EIR, the Use Permit for the Project, and the Development Agreement, made the findings required by section 18.62.110 of the Monterey County Code with respect to the Development Agreement, and recommended the Board of Supervisors enter into the Development Agreement. The Board of Supervisors considered the proposed Development Agreement at public hearing duly noticed for February 3 and continued by the Board of Supervisors to February 10, 2015.

SECTION 3. AMENDMENT OF LAND USE ENTITLEMENTS; SUBSTITUTION OF GUARANTOR

- 1. Notwithstanding the provisions of section 18.62.140.B of Chapter 18.62 of the Monterey County Code, and as a specific exception to those provisions with respect to the Project only, any future amendment to the land use permits or entitlements for the Project shall be incorporated into the Development Agreement without the need to amend the Development Agreement.
- 2. Notwithstanding the provisions of section 18.62.140.B of Chapter 18.62 of the Monterey County Code, and as a specific exception to these provisions with respect to the Project only, substitution of the guarantor pursuant to the provisions of Section 10.1 of the Development Agreement shall be incorporated into the Development Agreement without the need to amend the Development Agreement. The Board of Supervisors hereby authorizes the County Risk Manager, upon consultation with the Planning Director and County Counsel, to approve the substitution of guarantor if the substitution is in

compliance with the terms of Section 10.1 of the Development Agreement.

SECTION 4. APPROVAL OF DEVELOPMENT AGREEMENT

The Board of Supervisors hereby approves the Development Agreement by and between the County of Monterey and California Flats Solar, LLC, attached to this ordinance as Exhibit 1. The Board also hereby authorizes the Chair of the Board of Supervisors to execute the Development Agreement, provided that, consistent with the requirements of section 18.62.120 of Chapter 18.62 of the Monterey County Code, the Chair of the Board shall not execute the Development Agreement until it has been approved as to form by County Counsel and executed by California Flats Solar, LLC and executed for the limited purposes provided in the Development Agreement by First Solar, Inc. and The Hearst Corporation.

SECTION 5. RECORDATION AND BINDING EFFECT

1. The Development Agreement shall not be recorded until the Development Agreement is fully executed and a complete legal description of the Land has been reviewed and approved by the Resource Management Agency- Planning Director and attached to the Development Agreement as Exhibit A to the Development Agreement. Once the legal description has been approved and attached to the Development Agreement and the Development Agreement is fully executed, the Development Agreement shall be recorded. The Clerk to the Board of Supervisors shall cause to be recorded in the Office of the Recorder of the County of Monterey, at California Flats Solar, LLC's expense, a fully executed copy of the Development Agreement, which shall include a legal description of the property subject thereto, and this ordinance approving the Development Agreement.
2. The effective date of the Development Agreement shall be the date of recordation of the Development Agreement.
3. The burdens of the Development Agreement shall be binding upon, and the benefits of the Development Agreement shall inure to, all successors in interest to the parties to the agreement.

SECTION 6. EFFECTIVE DATE.

This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this ____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Simon Salinas
Chair, Monterey County Board of Supervisors

A T T E S T:

Gail Borkowski,
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

By: 
Wendy S. Strimling
Senior Deputy County Counsel

RECORDING REQUESTED BY AND WHEN RECORDED
MAIL TO:

Resource Management Agency-Planning Department County
of Monterey

168 W. Alisal Street, 2d Floor

Salinas, CA 93901

APNs: 143-011-001-000, 143-011-002-000, 143-011-003-000, 143-011-004-000, 143-001-007-000, 143-011-008-000, 143-011-012-000, 143-011-023-000, 143-011-024-000, 143-011-025-000, 423-191-037-000, 423-191-038-000, 423-191-039-000, 424-181-012-000, 424-181-013-000, 424-181-014-000, 424-181-015-000, 424-181-016-000, 424-081-018-000, 424-081-035-000, 424-081-036-000, 424-081-037-000, 424-181-038-000, 424-191-015-000, 424-191-016-000, 424-201-007-000, 424-201-009-000, 424-201-010-000, 424-201-011-000, 424-211-001-000, 424-211-004-000, 424-211-024-000, and 424-211-025-000.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEVELOPMENT AGREEMENT BY AND
BETWEEN THE COUNTY OF MONTEREY
AND
CALIFORNIA FLATS SOLAR, LLC**

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DEVELOPMENT AGREEMENT BY AND BETWEEN

THE COUNTY OF MONTEREY AND CALIFORNIA FLATS SOLAR, LLC.

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into on _____, 2015 by and between the County of Monterey, a political subdivision of the State of California, ("County") and California Flats Solar, LLC, a California limited liability company ("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 or otherwise defined in this Agreement. 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 California 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, the County adopted Monterey County Code Chapter 18.62, which sets forth procedures and requirements for the consideration of development agreements ("County Development Agreement Procedures"). This chapter enables the 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 Land.

The land and development governed by this Agreement consists of the following: a 280 megawatt ("MW") solar energy facility located on a footprint of approximately 2,120 acres ("Facility"), which would be part of a total project site area located on approximately 2,720 acres

of land (the “Land”).

The Land is described in **Exhibit A** and depicted on the map attached as **Exhibit B**. Hearst Corporation (the “Landowner”) owns the fee interest in the Land. Owner has an option to lease the Land from the Landowner, such that Owner has a legal interest in the Land (such Owner’s interest in the Land, pursuant to the option to lease and pursuant to the lease, following the exercise of the option and the execution and delivery of the lease, being hereinafter referred to as the “Property”). Under the 2010 Monterey County General Plan and County zoning, the Land is designated and zoned either Farmland or Permanent Grazing. These zoning districts allow a solar power electric generation facility as a conditional use requiring a use permit per Monterey County Code sections 21.30.50 and 21.34.50. The Land is located in an area which has been identified by the state as a Competitive Renewable Energy Zone under California’s Renewable Energy Transmission Initiative.

E. Development of the Land.

The County has prepared the Environmental Impact Report (State Clearinghouse No. 2013041031) for the Project (“Project EIR” or “EIR”), which relates to the development of the Land with a solar farm as described more fully therein. Specifically, this Agreement relates to the development of a 280 MW project, referred to as “proposed project” in the Project EIR, which would be located on approximately 2,720 acres within a fenced portion of the Land, and would involve the development of the following components:

- Photovoltaic (“PV”) solar modules and steel mounting structures;
- Internal electrical collector system;
- Pad-mounted electrical inverters and transformers;
- Two on-site electrical substations;
- A 230kV interconnection switching station operated by Pacific Gas & Electric Company (“PG&E”);
- Operation and maintenance (“O&M”) building;
- Septic system and leach field;
- New well, temporary storage ponds, water tank;
- Improvements to and reconfiguration of existing on-site access roads;
- Right of way improvements at Highway 41 in San Luis Obispo County;
- Security fencing;
- Lighting; and

- Transmission support towers and lines to interconnect the Facility and PG&E interconnection switching station with the existing Morro Bay-Gates 230kV transmission line.

Collectively, such development shall be known as the “Project”.

F. Initial Project Approvals.

The 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. _____).** On _____, 2015, pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000, et seq.), the CEQA Guidelines (14 Cal. Code Regs. § 15000 et seq.), and the County’s local implementing procedures for the California Environmental Quality Act (collectively, “CEQA”), the Board of Supervisors of the County of Monterey (“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. **County Use Permit (Resolution No. _____).** On _____, 2015, the Monterey County Board of Supervisors, after a duly noticed public hearing, approved and adopted Use Permit No. _____. The Use Permit allows the construction of a 280 Megawatt solar generating facility on an approximately 3,000 acre site including: photovoltaic (PV) solar modules, pad-mounted inverters and transformers, two substations (approximately 6 acres each), a switching station (approximately 6 acres), a 4,000 square foot operations and maintenance building, an approximately 155 acre utility corridor, other infrastructure needed to serve the proposed Project and grading of approximately 880,000 cubic yards of cut and 880,000 cubic yards of fill (“Use Permit”), subject to conditions of approval which include mitigation measures (“Conditions of Approval”).

3. **Development Agreement (Ordinance No. _____).** On _____, 2015, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board made the following findings as required by Monterey County Code section 18.62.110 with respect to the Agreement:

- a) It was processed in accordance with the Development Agreement Statute;
- b) It is consistent with the Monterey County General Plan, any area plan, and any applicable specific plan;

- c) It is in the public interest;
- d) It provides public improvements and benefits that would not otherwise be obtained through applicable development approval processes; and
- e) It is consistent with all of the requirements of the County's Development Agreement procedures reflected in Chapter 18.62 of the Monterey County Code.

On these bases, on _____, 2015, the Board adopted Ordinance No. _____, approving this Agreement ("County DA Ordinance"). This Agreement will become effective on the date that this Agreement, including a complete legal description as set forth in Exhibit A, is recorded in the Office of the County Recorder("Effective Date").

G. Intent of Parties.

The 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. The County desires to enter into this Agreement because it will provide for the orderly development of the Land, provide for public benefits beyond those that otherwise could be imposed as conditions of approval, and achieve the goals and purposes of the Development Agreement Statute and the County's Development Agreement Procedures. In exchange for these benefits to the County, together with the other public benefits derived from development of the Project, Owner desires to enter into this Agreement to reduce uncertainty in the land use regulatory process and receive the assurance that it may proceed with development of the Project in accordance with the Project Approvals under Existing Rules, as set forth more fully below.

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

AGREEMENT

Section 1. Definition of Terms.

The following defined terms are used in this Agreement:

1.1 **"Agreement"** means this Development Agreement between the County and Owner. This Agreement also is sometimes referred to herein as "DA".

1.2 **"Board"** means the Board of Supervisors of the County of Monterey.

1.3 **"Building Permit"** refers to a document issued by the County of Monterey authorizing the holder to construct a building, including without limitation authorization to perform electrical, mechanical, and/or plumbing work..

1.4 **"CEQA"** has the meaning set forth in Recital F(1).

1.5 **“Construction Permit”** refers to a document issued by the County of Monterey authorizing the holder to construct a building, perform grading or a combination of both, including without limitation authorization to perform electrical, mechanical, and/or plumbing work.

1.6 **“County”** means the County of Monterey, a political subdivision of the State of California.

1.7 **“County Development Agreement Procedures”** has the meaning set forth in Recital C.

1.8 **“County DA Ordinance”** has the meaning set forth in Recital F(3).

1.9 **“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.

1.10 **“Decommission Bond”** is a bond to be provided by the Owner to the County to meet the obligations set forth in Section 3.6.

1.11 **“Development Agreement Statute”** has the meaning set forth in Recital B.

1.12 **“Dispute”** has the meaning set forth in Section 9.1.

1.13 **“EIR”** or **“Project EIR”** means the California Flats Solar Project EIR certified by the Board on _____, 2015 by Resolution No. _____, as set forth in Recital E.

1.14 **“EIR Certification”** has the meaning set forth in Recital F(1).

1.15 **“Effective Date”** has the meaning set forth in Recital F(3).

1.16 **“Enforced Delay”** has the meaning set forth in Section 7(d).

1.17 **“Existing Rules”** means the Rules, Regulations and Official Policies of the County in effect on the Effective Date.

1.18 **“Facility”** has the meaning set forth in Recital D.

1.19 **“Initial Approvals”** has the meaning set forth in Recital F.

1.20 **“JAMS”** has the meaning set forth in Section 9.1.

1.21 **“Land”** has the meaning set forth in Recital D.

1.22 **“Landowner”** means the The Hearst Corporation and all of its successors and assigns.

- 1.23 **“MMRP”** has the meaning set forth in Recital F(1).
- 1.24 **“New Rules”** has the meaning set forth in Section 3.3.
- 1.25 **“Notice of Default”** has the meaning set forth in Section 7(a).
- 1.26 **“Owner”** means the California Flats Solar, LLC, a California limited liability company, and all of its successors and assigns. California Flats Solar, LLC is a wholly owned subsidiary of First Solar, Inc.
- 1.27 **“Planning Commission”** means the Monterey County Planning Commission.
- 1.28 **“Planning Director”** means the head of the County of Monterey, Resource Management Agency (RMA) - Planning Department, as more fully defined in section 2.30.020 of the Monterey County Code.
- 1.29 **“Project”** has the meaning set forth in Recital E.
- 1.30 **“Project Approvals”** means the Initial Approvals and Subsequent Approvals, collectively.
- 1.31 **“Project Infrastructure”** has the meaning set forth in Section 2.2.
- 1.32 **“Project Land Use Plan”** denotes the location of Project components.
- 1.33 **“Property”** has the meaning set forth in Recital D.
- 1.34 **“Recorder”** means the Office of the Recorder of the County of Monterey .
- 1.35 **“Regulatory Processing Fees”** means fees and charges adopted by the County for the purpose of defraying the 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 the 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.
- 1.36 **“Rules, Regulations and Official Policies”** means the County rules, regulations, ordinances, laws, 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 or Project.
- 1.37 **“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 Land, including, without limitation, tentative and final subdivision maps, parcel maps and lot line adjustments; conditional use

permits; design review approvals; building permits; grading permits; construction permits; certificates of occupancy; approvals of financing districts or other financing mechanisms; and any amendments thereto.

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

1.39 **“Use Permit”** has the meaning set forth in Recital F(2).

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

Section 2. Owner’s Obligations.

2.1 Development of the Project.

Development of the Project shall be consistent with: (a) this Agreement; (b) the Monterey County General Plan as it existed on the Effective Date; (c) the Monterey County Code as it existed on the Effective Date; (d) the Initial Approvals, including, without limitation, the EIR, the Use Permit, all conditions of approval, and the MMRP (see **Exhibit C**, **Exhibit D**, and **Exhibit E**); (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.

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

The Parties acknowledge and agree that the County’s approval of this Development Agreement is, in part, in reliance upon and in consideration of Owner’s payment of additional public benefit compensation as set forth in this Development Agreement.

2.3 Design of Project Infrastructure.

Development of the Land, including, without limitation, infrastructure, facilities, improvements, and services and amenities necessary to serve the Project (“Project Infrastructure”), shall be subject to final design review by the County in accordance with the EIR, Use Permit, Conditions of Approval, MMRP, and the Monterey 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, shall govern the design and scope of all Project Infrastructure to be constructed on the Land as part of the Project.

2.4 Provision of Employment During Construction and Operations; Commitment to Employ Local Workers.

Development of the Project is anticipated to provide approximately five hundred (500) to seven hundred fifty (750) construction jobs during the construction period and up to eleven (11)

jobs during the operations and maintenance period of the Project. Owner understands and mutually supports the County's goal to increase available employment opportunities for permanent Monterey County residents. Owner will include in its construction and support services' contracts a requirement that each contractor hiring employees for the Project include provisions that they acknowledge the County's goal and give preference to hiring permanent Monterey 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 and Construction Contractor to use diligent efforts to outreach to the trade unions and to work through the County to participate in two (2) job fairs in Monterey County to inform and educate local residents about employment opportunities and training available through the Project. Owner has also agreed to establish a shuttle park-and-ride location in Monterey County, with such location subject to approval by the Planning Director, to facilitate local worker access and to minimize construction traffic.

2.5 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 additional to that which is required by the Conditions of Approvals of the Use Permit and the MMRP, Owner shall provide the following additional public benefits to the County:

2.5.1 The total amount of all Bradley-Burns Uniform local sales and use tax revenue received by the County of Monterey as a result of the Project, as allocated to the County by the state Board of Equalization, for the purchase, sale, or use of any and all materials, equipment, fixtures or other items upon which sales or use tax is due (including any and all sales or use tax due from any other parties involved in the development and construction of the Project) is hereinafter referred to as the "Total Project Sales and Use Tax Revenue." At the end of the construction period as set forth in **Exhibit F**, to the extent that the Total Project Sales and Use Tax Revenue is less than Three Million Dollars (\$3,000,000), Owner agrees to pay to the County the difference (the "Additional Payment") to make the total received not less than Three Million Dollars (\$3,000,000). If, at the end of the construction period, the County has received equal to or greater than Three Million Dollars in Total Project Sales and Use Tax Revenue, then Owner shall not be required to make any Additional Payment. The determination and verification of the Total Project Sales and Use Tax Revenue and the verification and timing of the payment of any Additional Payment shall be made in accordance with the terms and conditions of **Exhibit F** attached hereto and incorporated herein by reference.

2.5.2 Owner agrees to work directly with the community of Parkfield to provide a \$75,000 financial contribution to the Parkfield community for purposes of establishing a local library in the town of Parkfield. Owner shall provide the County with an update of the status of its efforts every six (6) months following the Effective Date and a final report at the time such efforts result in an agreement with the community of Parkfield.

2.5.3 Project construction traffic is expected to access the Project site using roads not under the jurisdiction of the County, including State highways and a private access road, as further described and analyzed in the Project EIR. In the event Project construction

vehicles need to access the Project site using County roads and cause damage to such County roads, Owner agrees to repair the damaged County roads to their prior condition at Owner's expense, which repair shall be completed no later than one year from the completion of construction.

2.5.4 Owner agrees to work with the California Department of Forestry and Fire Protection ("Cal Fire") to provide adequate fire and emergency services for the construction and operation of the Project.

2.6 Inspection and Periodic Compliance Review

Owner agrees to pay for the County to contract for inspection services for the Project site to ensure compliance with building, grading, and construction permit requirements, provided that the County and Owner mutually agree upon the personnel to perform the inspection services, which agreement shall not be unreasonably withheld by either Party. Owner also agrees to pay the costs of County's periodic review of Owner's compliance with this Agreement as required pursuant to Monterey County Code Section 18.62.150, including reimbursing County for hours expended by County staff and/or consultants under contract with the County to conduct the periodic compliance review and for costs of notice of any public hearings and any other costs in connection with the periodic review. In accordance with subsection A of section 18.62.150, Owner agrees to provide such information and documents as Planning Director requires to conduct the Annual Review.

Section 3. Owner's Vested Rights.

3.1 Vested Right to Develop the Project.

Owner shall have the right to develop the Land with the Project in accordance with this Agreement and other Project Approvals in accordance with the Existing Rules. The Parties acknowledge and agree that Subsequent Approvals will be required to fully implement the Project.

The County shall process and consider any application for a Subsequent Approval related to the Project in accordance with the Existing Rules. The following shall be as set forth in the Project Approvals: permitted uses of the Land; the density and intensity of such uses; the maximum height and size of proposed buildings; the construction, installation and extension of public improvements; and the development standards and design guidelines.

Notwithstanding any administrative or judicial proceedings, initiative or referendum concerning the Initial Approvals, Subsequent Approvals, or EIR, and provided that such actions by the County or Owner are not proscribed by law or court order, County shall process the Owner's applications for Subsequent Approvals as provided for herein to the fullest extent allowed by law and Owner may proceed with the development pursuant to the Initial Approvals or Subsequent Approvals to the fullest extent allowed by law. Nothing in this Development Agreement limits the authority or obligation of the County to hold necessary public hearings or limits the discretion of the County, provided that the subsequent discretionary actions shall not conflict with those elements vested as a result of this Development Agreement.

3.2 Development Impact Fees and Regulatory Processing Fees.

(a) Owner shall pay all Development Impact Fees, as identified below (“Development Impact Fees”) and in the amount in effect on the Effective Date. Owner shall not be required to pay any Development Impact Fees newly established after the Effective Date. This limitation on Development Impact Fees does not prohibit County from imposing such other impact fees and exactions in the Conditions of Approval of the Use Permit, its associated MMRP, and Subsequent Approvals as necessary to address impacts of the Project.

(b) The 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 based on the fee schedule in effect as of the Effective Date.

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 Mitigation: \$0.18/SF for the “gross floor area”, as defined in the Uniform Building Code, of the Facility’s O&M building.

(c) Owner shall pay all Regulatory Processing Fees and any fees for required Project permits approved by the Planning Commission and/or the Board that are made part of the Project’s Conditions of Approval based on the payment date(s) set forth in Initial Approvals and Subsequent Approvals respectively and in accordance with Section 3.3 below.

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

Development of the Land with the Project shall be subject to the rules, regulations, ordinances, and official policies of the County applicable to such development on the Effective Date. To the extent any future changes in the County’s general plan, specific plans, zoning ordinance, or any future rules, ordinances, regulations or policies adopted by the County purport to be applicable to the Project or Land but are inconsistent with the terms and conditions of this Agreement, the terms of this Agreement shall prevail, unless the Parties mutually agree to amend or modify this Agreement. The 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 Land only to the extent that such New Rules do not conflict with the terms and conditions of this Agreement or the Project Approvals, in which case such New Rules may apply without amendment or modification of this Agreement.

3.4 Modification or Suspension by State or Federal Law; Conditions Dangerous to Public Health or Safety.

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. This Agreement does not limit the authority of the County to

apply to Project Approvals or the Land those changes in County plans, regulations, and policies which are specifically mandated by changes in 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.

Furthermore, this Agreement does not limit the authority of the County to impose requirements and conditions on Subsequent Approvals if such requirements or conditions are necessary to protect persons or property from conditions dangerous to the public health or safety, nor shall this Agreement be construed to limit the authority of the County to require compliance with building standards codes and such other codes, ordinances, and regulations as are necessary to protect against a condition dangerous to the public health or safety.

3.5 CEQA.

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

3.6 Decommissioning Agreement.

The County wishes to protect itself and the public in the event Owner, or its successors or assigns, cannot complete the expected Project life span, ceases on-going business operations, or abandons the Project and/or the Land for whatever reason. Owner agrees to provide to the County a performance or surety bond ("Decommission Bond") from an insurance or surety company, with a Best's Rating of not less than AX as financial security for the estimated cost of decommissioning the Project. The amount of the Decommission Bond shall be calculated based on an Initial Decommissioning and Restoration Plan approved by the Planning Director and Landowner prior to the County's issuance of Construction Permits for the Project which sets forth a cost estimate ("Initial Decommissioning Estimate") based on the assumed cost of the removal and the recycling or disposal of applicable project components (excluding PG&E facilities) and the revegetation and limited grading of the Land consistent with Section 2.8 of the Project EIR and the Use Permit. While the Initial Decommissioning Estimate will be based upon the current description of decommissioning activities set forth in the Project EIR, the actual activities involved in the final facility decommissioning will depend on the actual future use of the site, as described further below. The Decommission Bond shall name the Landowner as an alternative obligee to the County of Monterey, with the right to draw upon the bond in order to cause the restoration of the Land, consistent with the Initial Decommissioning and Restoration Plan, provided that Landowner obtain the written consent of the Planning Director to draw upon the bond.

A Final Decommissioning and Restoration Plan shall be completed and approved by the

parties (including the Landowner) no later than eighteen (18) months prior to the end of the term of the Use Permit or, in the event that decommissioning is to occur prior to the end of the term of the Use Permit, prior to undertaking any decommissioning activities. The Final Decommissioning and Restoration Plan shall include an updated and Final Decommissioning Estimate, intended to replace the Initial Decommissioning Estimate. Following approval of the Final Decommissioning and Restoration Plan by the Planning Director, the Owner shall modify or replace the Decommission Bond such that the Decommission Bond shall be in the amount of the Final Decommissioning Estimate amount.

It is the intent of this Section 3.6 that the Decommission Bond along with the residual value of installed improvements will provide sufficient financial assurances for the County with respect to the decommissioning of the Project and restoration of the Land. The Owner shall promptly notify the County of the termination or expiration of the Owner's contemplated lease with the Landowner or the abandonment of the Project. The Owner, its successors or assigns shall properly decommission the Project and restore the Land to the agreed restoration condition described in the Final Decommissioning and Restoration Plan within twelve (12) months following a notification in writing from the County to Owner that decommissioning of the Project and restoration of the Land is required due to the occurrence of one of the following: (i) the termination or expiration of the Use Permit, (ii) the termination or expiration of the Owner's contemplated lease with the Landowner, or (iii) the abandonment of the Project for whatever reason. If the Owner does not decommission the Project and restore the Land within the time period set forth in the preceding sentence, then the Landowner (at Landowner's election) shall have the initial right to draw upon the Decommission Bond to perform the decommissioning and/or restoration, subject to the written consent of the Planning Director. If the Landowner does not draw upon the Decommission Bond within ninety (90) days of its right to do so, the County may then elect to use the Decommission Bond to perform the decommissioning and/or restoration. The Decommission Bond shall be used by the Landowner and/or the County only for the decommissioning of the Project and/or the restoration of the Land. To the extent that Owner, its successors, or assigns (or Landowner as provided above) decommission the Project and/or restore the Land as required by the Final Decommissioning and Restoration Plan, the Decommission Bond, or any unused portion thereof, shall be returned to the Owner or its designee. Schedule 3.6 includes a joinder by Landowner, pursuant to which Landowner is agreeing to be bound by the provisions of this Section 3.6 that apply to Landowner; for the avoidance of doubt, it is agreed that, except for the specific provisions of this Section 3.6 that apply to the Decommission Bond (including, without limitation, Landowner's agreement (i) that the Decommission Bond required under this Agreement will also satisfy the requirement to provide a decommissioning bond under the form of lease between Owner and Landowner and (ii) that Landowner will exercise its rights with respect to the Decommission Bond in accordance with this Section 3.6), nothing in this Section 3.6 or any other provision of this Agreement is intended, or shall be deemed, interpreted or construed, to modify, amend or otherwise affect the provisions of the form of lease previously agreed upon between Owner and Landowner with respect to any other matters, including any other rights of Landowner or obligations of Owner with respect to any other matters in the form of lease relating to decommissioning of the Project. In the event of any dispute between Owner and Landowner with respect to the Decommission Bond, the decommissioning of the Project, or the restoration of the land, the Owner shall remain responsible to County to fulfill the obligations of decommissioning of the Project and the

restoration of the Land consistent with the Initial or Final Decommissioning and Restoration Plan, whichever is in effect at the relevant time. Owner shall indemnify, defend and hold the County and its officers, agents, and employees harmless from and against any liability, claim, action, or proceeding against the County by Landowner or any third party relating to any dispute between Owner and Landowner and their successors and assigns. The obligations of Owner under this Section 3.6 shall survive the termination of this Agreement.

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 the 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, the Use Permit, the Conditions of Approval, this Agreement, and Subsequent Approvals.

3.8 Regulation by Other Public Agencies.

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

Section 4. Cooperation.

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 the 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 state 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 County's Processing of Subsequent Approvals.

The 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 the County and Owner mutually determine that additional personnel or outside consultants need to be retained to assist the County to expeditiously process any Subsequent Approval, the cost of any such personnel or consultants shall be paid by Owner. The additional personnel or outside consultant(s) shall be under the direction of the County.

The County shall retain its discretion in its consideration of any and all Subsequent Approvals but shall exercise that discretion in a manner consistent with this Agreement. The Parties acknowledge that the intent of the Parties is that this Agreement be construed in a manner that protects the vested rights granted herein to the maximum extent allowed by law. The Parties further acknowledge that the County is restricted in its authority to limit its police power by contract and the limitations contained in this Agreement are intended to reserve to the County all of its police power that cannot be so limited. This Agreement shall be construed to reserve to the County all such power and authority which cannot be restricted by contract including without limitation, compliance with CEQA.

Section 5. Effective Date of Development Agreement.

This Effective Date of this Agreement shall be the same as the effective date of the ordinance approving this Agreement (see Recital F).

Section 6. Term of This Agreement.

6.1 Duration of Agreement.

The term of this Agreement shall commence on the Effective Date and shall continue for thirty-four (34) years from the date the Board adopts the County DA Ordinance approving this Agreement ("Term") unless this Agreement is extended or sooner terminated as provided herein in accordance with County 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 Extension by Agreement.

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

Section 7. Default.

7.1 Notice of Default.

Failure or unreasonable delay by the 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.

7.2 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.

7.3 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. 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 conditions of Section 9 below. Notwithstanding this Section 7 or Section 9, however, County does not waive its authority to terminate or modify the Development Agreement pursuant to Monterey County Code section 18.62.150 or to modify or revoke Owner's Use Permit pursuant to Monterey County Code section 21.74.060, and nothing in this Development Agreement shall be construed as such a waiver.

7.4 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, unforeseen economic circumstances, 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"). 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. Termination.

8.1 Termination 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 Clerk of the Board of Supervisors may cause a notice of such termination in a form satisfactory to County Counsel and Owner to be duly recorded in the official records of the County of Monterey.

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 Monterey County Code section 18.62.140 (A).

Section 9. Periodic Review; Dispute Resolution.

9.1 Review for Compliance

During the term of this Agreement, Owner's compliance with the terms and conditions of this Agreement shall be reviewed annually ("Annual Review"), and this Agreement may be modified or terminated in accordance with section 18.62.150 of the Monterey County Code. Any action by the County under this Section 9.1 shall be an additional remedy to the remedies set forth in Section 9.2 and 9.3 of this Agreement.

9.2 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"), the 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, the 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 such JAMS office for final binding arbitration pursuant to Section 9.2 below. Either the 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. The 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 within thirty (30) days after the written request for mediation has been received, then JAMS shall appoint the mediator at its discretion. If the Parties cannot agree on the date of the mediation within thirty (30) days after the written request for mediation has been received, then JAMS shall set a mediation date. The 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.

9.3 Arbitration.

a) Either the 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 the County and Owner so desire. Unless otherwise agreed to by the County and Owner, the mediator shall be disqualified from serving as the arbitrator in the case. 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. Notwithstanding the foregoing, the arbitrator shall follow the law (including applicable statutes of limitations) and all rules of evidence unless the parties stipulate to the contrary. Any provisional remedy (including preliminary or permanent injunctions and writs of attachment and possession) which would be available from a court of law or equity shall be available from the arbitrator pending completion of the arbitration, provided that either party may seek immediate injunctive relief from a court. The benefited party of such provisional remedy shall be entitled to enforce such remedy in court immediately, even though a final arbitration award has not yet been rendered. The award or decision of the arbitrator, which may include an order of specific performance, shall be final and binding on all parties and enforceable in any court of competent jurisdiction; provided, however, that the award shall be subject to court review for error (failure to follow the law and/or a material factual error) or may be vacated or corrected for any of the reasons permitted under and pursuant to California Code of Civil Procedure Sections 1286.2 or 1286.6. Should the matter or issue not be resolved in arbitration and instead be subject to further judicial review as provided above, such matter or issue will be litigated in a California court of competent jurisdiction. The arbitrator shall have the power to interpret this Agreement but shall not change (and shall not have the authority to modify) the terms of this Agreement. During the arbitration, 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 the County and Owner, and each side shall be responsible for its own attorney(s) and expert(s) witness fees.

b) The dispute resolution process described under Sections 9.1, 9.2, and 9.3(a) above shall be undertaken in good faith. A mediator or arbitrator other than JAMS may be mutually agreed upon by the County and Owner in writing. By agreeing to this dispute resolution process, neither the 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 the 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.

Section 10. Assignment and Assumption of Obligations.

10.1 Assignment of Rights, Interests and Obligations; Substitution of Guarantor.

Owner may sell, assign, or transfer in whole or in part the Property to any Subsequent Owner at any time during the Term of this Agreement with the County's written consent so long

as the Subsequent Owner assumes in writing the obligations of Owner in accordance with Section 10.2 below. County's consent shall not be granted unless Owner provides to the County sufficient evidence of the Subsequent Owner's ability to meet the financial obligations under this Agreement.

Owner may need to substitute the guarantor in the event of a change in ownership in the Owner or for financing purposes, in which case the Owner will notify the Planning Director of the substitution in writing thirty (30) days before the required change and prepare a revised Exhibit H identifying the new guarantor. The County, through its Risk Manager upon consultation with the Planning Director and County Counsel, shall accept the guarantor substitution so long as the new guarantor has an asset value of at least \$100 million, and the County shall release the prior guarantor (First Solar, Inc.) of any obligation or liability upon receipt of the fully executed revised Exhibit H. Substitution of the guarantor pursuant to the procedures set forth in this paragraph shall not require an amendment of this Agreement.

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

Express written assumption by a Subsequent Owner 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. Upon recordation of written confirmation of said assumption, Owner shall automatically be released from those obligations assumed by the Subsequent Owner.

Section 11. General Provisions.

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. Except as otherwise specifically provided in this Agreement, all persons employed or utilized by Owner in connection with this Agreement and the Project shall not be considered employees of the 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 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 18.62 of the Monterey County Code, this Development Agreement which shall be adopted by ordinance shall control, and shall not be invalidated by any such conflict.

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 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 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 Monterey County Code Section 18.62.140 (A). In the event the Parties modify this Agreement, the Clerk of the Board of Supervisors shall cause notice of such action to be duly recorded in the official records of Monterey County within ten (10) days of such action.

11.6 Subsequent Approvals Do Not Require Amendment.

The 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 the County approves such amendment in connection with Subsequent Approval(s). Upon the 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 Project is a Private Undertaking.

The Parties agree that: (a) any development by Owner shall be a private development; (b) the 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 the County and Owner is such that Owner is an independent contractor and not an agent of the 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 No Discrimination Permitted.

Owner shall not unlawfully discriminate in any way against any person on the basis of race, color, national origin, sex, ancestry, marital status, sexual orientation, age (over 40), creed, religion, physical disability, mental disability, or medical condition in connection with or related to the performance of this Agreement.

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 the land pursuant to California law, including, without limitation, Civil Code section 1468.

11.10 Recordation of Agreement.

No later than ten (10) days after the Effective Date, at Owner's expense, the Clerk of the Board of Supervisors shall cause a fully executed copy of this Agreement, together with the ordinance enacting this Agreement, to be duly recorded in the official records of Monterey County. Following full execution of the Agreement, the County shall notify the Owner of the amount of the recordation fee, and the Owner shall provide the recordation fee to the Clerk of the Board no later than five (5) days after the Effective Date.

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 by Express Mail of the United States Postal Service or Federal Express or any other courier service guaranteeing overnight delivery, charges prepaid, or may be transmitted by facsimile, in any case addressed to the following:

County: County of Monterey, RMA Planning Department
Attn: Planning Director
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901
Telephone: (831) 755-5025
Facsimile: (831) 757-9516

Copy to: Office of County Counsel , County of Monterey
Attn: County Counsel
168 West Alisal Street, 3rd Floor
Salinas, CA 93901
Telephone: (831) 755-5045
Facsimile: (831) 755-5283

Owner: California Flats Solar, LLC
Attn: Brian Kunz
135 Market Street, 6th Floor
San Francisco, CA 94105
Telephone: (415) 935-2500
Facsimile: (415) 935-2501

Copy to: First Solar, Inc.
Attn: Project Development Counsel
135 Main Street, 6th Floor
San Francisco, CA 94105
Telephone: (415) 935-2500
Facsimile: (415) 935-2501

And a copy to:
Anthony Lombardo & Associates, Inc.
Attn: Anthony L. Lombardo, Esq.
450 Lincoln Avenue, Suite 101
Salinas, CA 93901
Telephone: (831) 751-2330
Facsimile: (831) 751-2331

Landowner: The Hearst Corporation
Attn: Director of Real Estate
5 Third Street, Suite 200
San Francisco, CA 94103
Telephone: (415) 777-8196
Facsimile: (415) 543-3490

Copy to: The Hearst Corporation
Office of General Counsel
300 West 57th Street, 40th Floor
New York, New York 10019
Telephone: (212) 649-2158
Facsimile: (646) 280-2158

Notices to Subsequent Owners shall be given by the County as required above only for those Subsequent Owners who have given the 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 Applicable Law.

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

11.13 Indemnification.

Owner shall defend, indemnify, and hold harmless the County, its officers, agents, and employees, from and against any liability, claim, action or proceeding against the County, its officers, agents and employees arising from or related to all of the following: (i) the authority of the County to enter into this Agreement, the validity of this Agreement, or approval of this Agreement ; (ii) personal injury and/or property damage received or sustained or alleged to have been received or sustained by any person or entity in connection with or on account of the performance of work on the Project by the Owner, or pursuant to this Agreement, except where such injury or damages were caused by the sole negligence or willful misconduct of the County or its officers, agents, or employees; (iii) damages or injury caused by one or more of the Project Approvals except where such injury or damages were caused by the sole negligence or willful misconduct of the County or its officers, agents, or employees; and (iv) approval of the Use Permit.

Owner further agrees that it will defend the County and/or reimburse the County for its reasonable costs of defense (including court costs and attorneys' fees) in connection with any such claim, action, or proceeding, provided that the Owner may reserve the right to be relieved of the obligation to defend or reimburse the County in the event the injury or damages were caused by the sole negligence or willful misconduct of the County, its officers, agents or employees as determined by a final judgment of a court of competent jurisdiction. This indemnification includes payment to County by Owner of all judgments and settlements imposed on the County within the scope of the indemnification, provided that neither Owner nor the County shall be liable for any settlement without the consent of Owner and County to the settlement. Where Owner defends the County, the County reserves the right to participate in the defense of any action, claim, or proceeding, but such participation shall not relieve Owner of its obligations under this Section 11.13. The indemnification provisions of this Section 11.13 shall survive termination of this Agreement and are in addition to any indemnification agreement required by the Use Permit.

11.14 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.

11.15 Construction.

This Agreement has been reviewed and revised by legal counsel for both the 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.

11.16 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.

11.17 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 the 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.

11.18 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, except to the extent that Landowner is joining into this Agreement pursuant to Section 3.6 and Schedule 3.6 and except to the extent that First Solar, Inc. or approved substitute guarantor is joining into this Agreement pursuant to Section 10.1 and Exhibit H.

11.19 Counterparts.

This Agreement and any and all amendments thereto may be executed in counterparts, and all counterparts together shall be construed as one document and have the same effect as if all of the Parties had executed the same instrument.

11.20 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 and that this Agreement is fully binding on the Owner. Owner warrants that all persons having a legal or equitable interest in the Property are executing the Agreement, except for owners of interests in easements who will not be bound by the Development Agreement.

11.21 Captions.

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

11.22 Listing and Incorporation of Exhibits.

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

Exhibit A: Legal Description of Land

Exhibit B: Map of Land

Exhibit C: [Intentionally blank]

Exhibit D: Use Permit, including Conditions of Approval

Exhibit E: Mitigation Monitoring and Reporting Plan (MMRP)

Exhibit F: Procedure for Determining Total Project Sales and Use Tax Revenue and Making the Additional Payment (if any)

Exhibit G: List of Existing Rules as of Effective Date (Existing Rules are on file with Resource Management Agency-Planning Department).

Exhibit H: Limited Joinder of First Solar, Inc.

Schedule 3.6: Limited Joinder of Landowner

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

“OWNER”:

CALIFORNIA FLATS SOLAR, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

COUNTY:

COUNTY OF MONTEREY

By: _____
Name: _____
Title: _____

Date: _____

APPROVED AS TO FORM: COUNTY COUNSEL

By: Wendy S. Strimling
Name: Wendy S. Strimling
Title: Senior Deputy County Counsel

Date: February 3, 2015

Exhibit A: Legal Description of Land
[forthcoming; to be completed prior to recordation]

Exhibit B: Map of Land

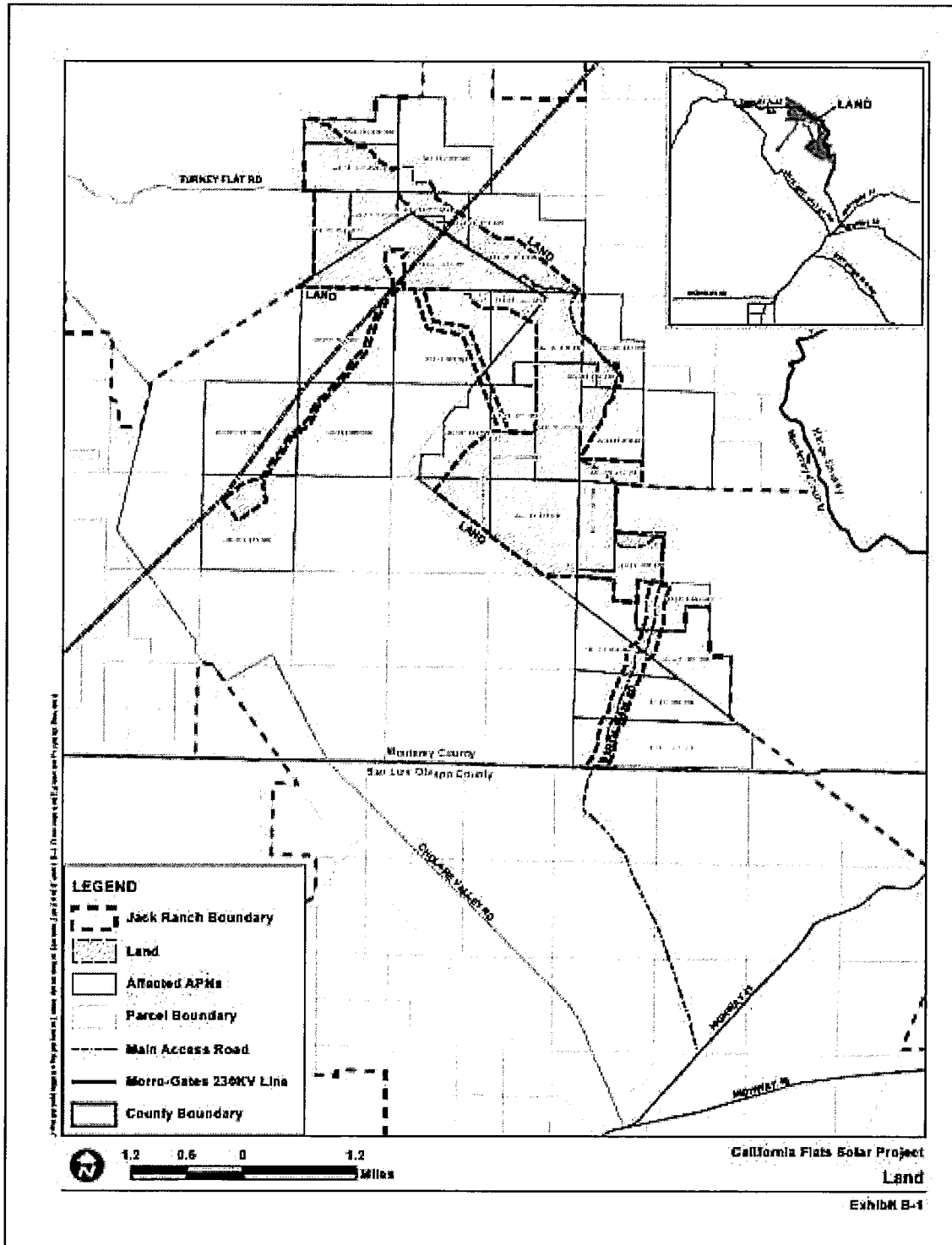


Exhibit C:

[Intentionally blank]

Exhibit D: Use Permit, including Conditions of Approval

(Forthcoming; to be attached after approval of Use Permit)

Exhibit E: Mitigation Monitoring and Reporting Plan (MMRP)
(forthcoming; to be attached after approval of MMRP)

**Exhibit F: Procedure for Determining Total Project Sales and Use Tax Revenue
and Making the Additional Payment (if any)**

Within thirty days after the Effective Date of the Development Agreement, Owner shall meet with the County Auditor or his designee to coordinate implementation of the procedures set forth in this Exhibit F.

Within three months after the end of each calendar quarter, County shall inform the Owner in writing of the total amount of Bradley-Burns Uniform Local Sales and Use Tax, as may be amended ("Local Sales and Use Tax") attributable to the development and construction of the Project (based on the description of "Total Project Sales and Use Tax Revenue" described in Section 2.5.1) and which has been allocated by the Board of Equalization to the County for the calendar quarter.

Not later than forty five (45) days after the due date for filing sales and use tax returns for each calendar quarter occurring after the commencement of any construction activity on-site through and including twelve (12) months following the date of the final completion under the engineering, procurement, and construction agreement for the Project and the commencement of commercial operations, Owner shall report, or cause its general contractor to report, to the County the amount of sales and use taxes related to the Project that are allocated to the County, and reported on Owner's, general contractor's, and subcontractors' (where the subcontract value meets or exceeds the five million dollar threshold) applicable California sales and use tax returns.

If, within 18 months following the date of final completion under the engineering, procurement, and construction agreement for the Project and the commencement of commercial operations for the Project, the Board of Equalization records show the cumulative total Local Sales and Use Tax attributable to construction of the Project and allocated by the Board of Equalization to County is less than Three Million Dollars (\$3,000,000), Owner shall pay such difference (the "Additional Payment") within ninety (90) days of the date County notifies Owner of such difference. The Owner shall, no later than ten days after the commencement of the 18 month period referenced above, notify the County in writing of the date of commencement of the 18 month period.

The foregoing obligation to pay such Additional Payment amount is subject to Owner's right to confirm, within such ninety (90) day time period, the amount of actual Local Sales and Use Tax attributable to construction of the Project and allocated by the Board of Equalization to the County. County shall be obligated to provide Owner with all requested relevant information regarding the total Project sales and use tax revenue, and Owner shall be obligated to provide County with copies of Owner's relevant Project records, including but not limited to any and all relevant sales and use tax filings associated with the Project which demonstrate that the actual amount of Local Sales and Use Tax paid by Owner which should have been allocated to County by the Board of Equalization is greater than the amount shown by Board of Equalization records. If Owner adequately documents any such discrepancy (such discrepancy being the difference between what was actually allocated by the Board of Equalization to the County as opposed to what should have been allocated by the Board of Equalization pursuant to state law and

regulation), Owner may defer that portion of the payment to the County that is in dispute as a result of the discrepancy, until the discrepancy is resolved in accordance with the procedures described in this Agreement or twelve months from the afore-referenced close of the ninety day time period, whichever is earlier.

If it is later determined, by the County, or as a result of a Board of Equalization proceeding, or otherwise, that any Additional Payment resulted in the County receiving more than Three Million Dollars (\$3,000,000) in total from both the Additional Payment and Total Project Sales and Use Tax Revenue, the County shall reimburse Owner for that portion of the Additional Payment, if any, that resulted in the County receiving any amount in excess of Three Million Dollars (\$3,000,000), subject to appropriation of funds by the Monterey County Board of Supervisors and according to such payment plan as the Board of Supervisors may approve, provided, however, that no reimbursement shall be required from the County to the extent that Total Project Sales and Use Tax Revenue, considered alone, are in excess of Three Million Dollars (\$3,000,000).

Exhibit G

List of Existing Rules as of Effective Date

The Existing Rules referenced in the Development Agreement, subject to the provisions and reservations of Section 3 of the Development Agreement, are those versions of rules, regulations, and official policies of the County in effect on the Effective Date of the Development Agreement, which are listed as follows:

- a. 2010 Monterey County General Plan, including the South County Area Plan.
- b. Zoning Ordinance: Monterey County Code Title 21.
- c. Buildings and Construction: Monterey County Code Title 18.
- d. Environment: Monterey County Code Chapters 16.08 - Grading; 16.12 - Erosion Control; 16.16 - Regulations for Floodplains in Monterey County; 16.40 - Protection of Agricultural Activities; 16.60 - Preservation of Oak and other Protected Trees.
- e. Health and Safety: Monterey County Code Chapters 10.60 - Noise Control and 10.46 - Weed Control.
- f. Streets, Sidewalks and Public Places: Monterey County Code Chapter 14.04 - Encroachments for Excavations, Construction, and Special Events.
- g. Public Services: Monterey County Code Chapters 15.08 - Water Wells; 15.20 – Sewage Disposal; 15.21 –Prohibited Discharge of Sewage into Streams; and 15.22 - Discharge of Contaminants into Waters of the County.
- h. Regional Development Impact Fee: Monterey County Code Chapter 12.90.
- i. Hazardous Materials: Monterey County Code Chapter 10.65 – Hazardous Materials Registration.

Exhibit H
Limited Joinder of First Solar, Inc.

Limited Joinder of First Solar, Incorporated: Owner is a wholly owned subsidiary of First Solar, Inc. As the parent corporation of Owner and in consideration for this Development Agreement, First Solar agrees to guarantee full and timely payment of any and all financial obligations of Owner to the County under this Agreement, including but not limited to the public benefit compensation as set forth in section 2.5, providing the Decommission Bond as set forth in section 3.6 and fulfilling the indemnification obligations set forth in section 11.13. First Solar is entering this Agreement for the limited purpose of agreeing to this financial guarantee.

Notice to First Solar shall be as follows:

First Solar, Inc.
Attn: Legal Department
350 West Washington Street, Suite 600
Tempe, Arizona 85281
Telephone: (419) 662-6899
Facsimile: (602) 414-9400

IN WITNESS WHEREOF, First Solar Inc. has executed this limited joinder on the dates set forth below.

FIRST SOLAR, INC.

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

Schedule 3.6

Limited Joinder of Landowner with respect to Section 3.6

Limited Joinder of Landowner: As an entity having a legal or equitable interest in the property that is the subject of this Development Agreement, the Landowner is entering into this Agreement for the limited purpose of acknowledging the existence of the Development Agreement between the Owner and County as required pursuant to Monterey County Code section 18.62.120(E) and permitting recordation of this Development Agreement on the Land and for the further limited purpose of agreeing with Owner and County as to the terms of Section 3.6 respecting the decommissioning of the Land, including, without limitation, the Decommission Bond and the procedure for drawing upon same.

Notice to Landowner shall be as follows:

The Hearst Corporation
Attn: Director of Real Estate
5 Third Street, Suite 200
San Francisco, CA 94103
Telephone: (415) 777-8196
Facsimile: (415) 543-3490

With a copy to:

The Hearst Corporation
Office of General Counsel
300 West 57th Street, 40th Floor
New York, New York 10019
Telephone: (212) 649-2158
Facsimile: (646) 280-2158

IN WITNESS WHEREOF, The Hearst Corporation has executed this limited joinder on the dates set forth below.

THE HEARST CORPORATION,
a Delaware corporation

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____