

INDEMNIFICATION AGREEMENT

THIS AGREEMENT is entered into this ^{August}~~May~~ 23rd day of ~~May~~, 2016, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, (hereinafter "COUNTY") and Whitney Point Solar, LLC, (hereinafter "APPLICANT"), a limited liability company organized under the laws of the State of Delaware.

W I T N E S S E T H:

WHEREAS, APPLICANT applied to COUNTY for one or more land use approvals; and

WHEREAS, litigation challenging the granting or issuance of land use approvals by governmental bodies is proliferating, and such litigation exposes COUNTY to potential liability for damages, costs, and attorney's fees; and

WHEREAS, in such litigation, the person or entity receiving land use approvals is designated as a real party in interest and is the party that primarily and directly benefits from the granting or issuance of the land use approvals; and

WHEREAS, the Board of Supervisors is an objective decision-making body and, therefore, has no special interest in the approval or denial of land use applications, or the outcome of litigation arising from such grant or denial, except as to those which promote important public policy; and

WHEREAS, COUNTY could incur great expense in the active defense of such litigation and, if unsuccessful, may also be required to pay the prevailing party's attorney's fees and costs; and

WHEREAS, fairness and sound fiscal policy require that the person or entity receiving the benefits of a land use approval should also bear the burden of the liability for potential injuries and the expense of such litigation; and

WHEREAS, APPLICANT and COUNTY mutually desire to enter into this Indemnification Agreement, by which APPLICANT shall indemnify, (at COUNTY's request) defend, save and hold COUNTY harmless, in order that COUNTY shall bear

no fiscal or financial burden whatsoever resulting from any litigation challenging the COUNTY's grant or issuance of land use approvals to APPLICANT relating to or affecting the PROJECT.

1. DEFINITIONS.

a. "APPLICANT" means the person or entity to whom the land use approval will be granted or issued, and his, her, or its heirs, assigns or successors in interest;

b. "Land Use Approval" shall include any benefit arising from any of the following: the certification of an Environmental Impact Report ("EIR"), adoption of a negative declaration or mitigated negative declaration, the grant of an amendment to the general plan or a rezoning; the issuance of a variance, conditional use permit, including the extension of the time in which the condition use permit may be exercised, Director's Review and Approval, or other discretionary land use permit; the approval of a parcel, tentative or final subdivision map; and any other document prepared pursuant to the Surface Mining and Reclamation Act ("SMARA"), the California Environmental Quality Act ("CEQA") or other law that is approved in conjunction with the land use approval. "Land use approval" does not include a ministerial permit;

c. "COUNTY" shall mean the County of Fresno, a political subdivision of the State of California; and,

d. "Project" means the uses of the land authorized by the following Land Use Approvals: (1) Time extension to exercise Unclassified Conditional Use Permit Application No. 3296 ^{5 SNC} and the Mitigated Negative Declaration based on Initial Study No. 6277; and (2) Unclassified Conditional Use Permit Application No. 3518 and the Mitigated Negative Declaration based on Initial Study No. 7053.

2. HOLD HARMLESS.

The APPLICANT hereby agrees to save, indemnify, hold harmless and, at COUNTY's request, defend COUNTY, its officers, agents, and employees, the

Fresno County Board of Supervisors, each member of the Fresno County Board of Supervisors, the Fresno County Planning Commission, from and against all expenses, demands, liabilities, claims, costs (including but not limited to court costs and attorney's fees), or damages of any nature whatsoever occurring or resulting to COUNTY, including, but not limited to, an award of attorney's fees and costs to the person, organization or entity bringing the cause of action, or their officers, agents, and employees, arising, from resulting from, or in connection with any COUNTY action in granting, issuing or approving Land Use Approvals for the Project.

When defending COUNTY, APPLICANT shall pay all attorneys' fees and costs related to the defense in any action brought against the COUNTY and the APPLICANT, except for any fees and costs incurred by the COUNTY in defense of any action, as provided in section 4 of this agreement. APPLICANT shall defend COUNTY through counsel selected by APPLICANT (including but not limited to in-house counsel) and shall keep the COUNTY fully informed as to the progress of such defense. COUNTY shall cooperate fully with APPLICANT in the defense of the claim.

3. NOTIFICATIONS AND COOPERATION BY COUNTY.

COUNTY shall NOTIFY applicant within seven (7) COUNTY business days of its receipt of any demand, claim, action, proceeding, or litigation in which COUNTY is to be indemnified and held harmless by APPLICANT. If COUNTY requests that APPLICANT defend COUNTY, it shall notify APPLICANT in writing within ten (10) COUNTY business days of its receipt of any such demand, claim, action, proceeding, or litigation. COUNTY shall cooperate fully in such defense.

4. COUNTY PARTICIPATION IN DEFENSE.

Nothing contained herein shall prohibit COUNTY, in its sole discretion, from participating in the defense of any demand, claim, action, proceeding, or litigation over and above representation by outside counsel, or from participating in the defense of any demand, claim, action, proceeding, or litigation. If COUNTY elects to also defend,

1 it shall do so in good faith and COUNTY shall bear its attorney's fees and cost. Except
2 as otherwise provided in this paragraph, in no event shall COUNTY's participation in
3 the defense of any demand, claim, action, proceeding, or litigation affect the
4 obligations imposed upon APPLICANT in section 2 of this Agreement.

5 5. REIMBURSEMENT OF COUNTY'S COSTS RE: ADMINISTRATIVE
6 RECORD.

7 If the COUNTY prepares the administrative record for any litigation challenging
8 a Land Use Approval for the Project, COUNTY acknowledges that it will make all
9 reasonable efforts to look to Petitioner bringing action for payment of costs associated
10 with preparation of administrative record as provided by law. However, only if the
11 Petitioner refuses to pay within 90 days, APPLICANT agrees to reimburse COUNTY
12 for its actual cost incurred, including, but not limited to, COUNTY staff and attorney
13 time expended, for certifying and/or preparing the administrative record in connection
14 with any litigation/ proceedings related to the subject matter of this Indemnification
15 Agreement. To the extent administrative record reimbursement and related costs are
16 recovered by the COUNTY in any litigation, APPLICANT shall be reimbursed to the
17 extent of any such recovery.

18 If the Petitioner or Plaintiff challenging a Land Use Approval for the Project is
19 permitted by law to prepare the administrative record, and elects to do so, and is later
20 determined to be the prevailing party in litigation against the COUNTY, APPLICANT
21 shall pay the bear the Petitioner's or Plaintiff's cost of preparing the administrative
22 record, as determined by the court with jurisdiction over the litigation, in addition to any
23 other expenses, demands, liabilities, claims, costs (including but not limited to court
24 costs and attorney's fees), or damages, pursuant to Section 2 of this Agreement.

25 6. COVENANT NOT TO SUE.

26 (a) Upon issuance of a building permit for the Project, APPLICANT on
27 behalf of itself, and its successors, and assigns, hereby fully releases COUNTY, its
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successors, and all other persons and associations, known or unknown, from all claims and causes of action, as a result of the above-described land use approval and covenants not to sue relating to such claims.

(b) APPLICANT acknowledges and agrees that this release applies to all claims that APPLICANT may have against COUNTY arising out of the above-described land use approval for injuries, damages, or losses to APPLICANT's person and property, real or personal, whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, or patent or latent.

(c) APPLICANT acknowledges and warrants that APPLICANT's execution of this release is free and voluntary.

(d) This release pertains to a disputed claim and does not constitute an admission of liability by COUNTY for the above-described land use approval.

(e) The provisions of paragraph 7 herein below, shall not apply to this covenant not to sue.

7. SEVERABILITY.

If any provision of this Agreement is determined to be illegal, invalid, void, or unenforceable in a final judgment by a court of competent jurisdiction, each and every other provision hereof shall remain in full force and effect, unless this severability provision would deny one or more of the parties to the Agreement of the material benefits of the Agreement, in which case the entire Agreement shall have no force and effect.

8. APPLICABLE LAW.

This Agreement is made and entered into in the State of California and shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be governed by, and construed, and enforced in accordance with the laws of the State of California.

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9. CONSTRUCTION OF CONTRACT.

The parties hereby acknowledge that they and their respective counsel have cooperated in the drafting and preparation of this agreement, for which reason this agreement shall not be construed against any party as the drafter thereof.

IN WITNESS WHEREOF, APPLICANT and COUNTY hereby execute this Agreement.

APPLICANT:
Whitney Point Solar, LLC

COUNTY OF FRESNO

By [Signature]

By [Signature]
ERNEST BUDDY MENDES, Chair,
Board of Supervisors

Date: 8-24-16

APPROVED AS TO LEGAL FORM:

By [Signature]
Attorney for Applicant

BERNICE E. SEIDEL, Clerk
Board of Supervisors

By [Signature]
Susan Bishop, Deputy

Date: 8-24-16

APPROVED AS TO LEGAL FORM:
DANIEL C. CEDERBORG, COUNTY
COUNSEL

By [Signature]

REVIEWED AND RECOMMENDED
FOR APPROVAL:

Steven E. White, PE, LS, Director
Department of Public Works and
Planning

By [Signature]