



1           WHEREAS, as part of the preparation of the Environmental Impact Report (“EIR”) for the  
2 Fifth Standard Solar Project described in CUP Nos. 3562 through 3564, COUNTY examined and  
3 described the potential for traffic and circulation related impacts of the PROJECT; and

4           WHEREAS, the EIR concluded that truck trips related to the construction of the  
5 PROJECT may result in damage to COUNTY-maintained roads, in particular the segment of Jayne  
6 Avenue between Interstate 5 and the project site; and

7           WHEREAS, Mitigation Measure TRA-3 of the MMRP requires, among other things, that  
8 OWNERS “enter into a secured agreement with Fresno County to ensure that the proposed project  
9 contributes its fair-share portion towards repairs of any County roads that are impacted by this project”;  
10 and

11           WHEREAS, Jayne Avenue, between Interstate 5 and the project site are to be known  
12 collectively as “ROADS” and constitute the PROJECT frontage; and

13           WHEREAS, this AGREEMENT, in accordance with California Public Resources Code  
14 Section 20181.6 and Section 15097 of Title 14 of the California Code of Regulations, is being entered  
15 into to satisfy the requirement of Mitigation Measure TRA-3 recited immediately above.

16           NOW, THEREFORE, in consideration of the foregoing recitals and for good and valuable  
17 consideration, the receipt and adequacy of which are hereby acknowledged, the OWNERS and the  
18 COUNTY, each of which is a “PARTY” to this AGREEMENT and collectively are “PARTIES” to this  
19 AGREEMENT, agree as follows:

20           **SECTION 1.**

21           This AGREEMENT is effective as of the Effective Date.

22           **SECTION 2. DEFINITIONS**

23           A.     “BUSINESS DAY” means Monday through Friday, inclusive, but excluding any day  
24 which is recognized as a legal holiday by COUNTY.

25           B.     “CALENDAR DAY” means a calendar day unless specified to the contrary in this  
26 AGREEMENT.

1 C. "DIRECTOR" means the Director of COUNTY'S Department of Public Works and  
2 Planning or his or her designee.

3 **SECTION 3. OBLIGATIONS OF OWNERS.**

4 The obligations of OWNERS under this AGREEMENT are:

5 A. Prior to COUNTY's issuance of construction, building, or encroachment permits  
6 authorizing the construction of any portion of the PROJECT, OWNERS shall prepare and submit a  
7 Traffic Control and Management Plan to the Road Maintenance and Operations Division of the Fresno  
8 County Department of Public Works and Planning and the Caltrans District 6 office for approval, and  
9 obtain all necessary permits, including any necessary permits to be issued by Caltrans, required at  
10 such time for work within the road right-of-way per the requirements Mitigation Measure TRA-1 of the  
11 MMRP for the PROJECT.

12 The OWNERS shall submit such plans to:

13 County of Fresno  
14 Department of Public Works and Planning:  
15 Attn: Road Maintenance and Operations Manager  
16 County of Fresno  
2220 Tulare Street, Sixth Floor  
Fresno, California 93721

17 B. OWNERS have submitted a preconstruction road survey report ("Preconstruction  
18 Report") to the Fresno County Department of Public Works and Planning as required by MM-TRA-2.

19 C. Upon completion of construction of the PROJECT and other PROJECT-related activities,  
20 unless otherwise authorized by DIRECTOR, in his or her sole and absolute discretion, OWNERS shall  
21 provide an update of the Preconstruction Report ("Updated Report") to evaluate the roads for any  
22 damage caused by the construction-related traffic; and

23 D. Not more than ten (10) CALENDAR DAYS prior to applying to the Department of Public  
24 Works and Planning for a Certificate of Occupancy for the PROJECT, unless otherwise authorized by  
25 DIRECTOR, in his or her sole and absolute discretion, OWNERS shall:

26 i. OWNERS shall, at their sole cost and expense, repair or replace ROADS  
27 identified by consultation with COUNTY and Caltrans District 6 that were identified as damaged in the

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1 Updated Report, provided that prior to conducting repairs or replacement of any public facility, (a)  
2 OWNER submits plans and specifics, from a duly licensed California civil engineer, for the proposed  
3 repairs and replacement work to the address identified in Section 3.A, above, (b) the DIRECTOR  
4 agrees to the type and extent of the road repairs required to mitigate the impacts on the ROADS, and  
5 (c) OWNERS obtain DIRECTOR's approval for such work.

6           ii.       OWNERS shall obtain a report, subject to approval by DIRECTOR, from a duly  
7 licensed California civil engineer documenting that ROADS have been repaired to pre-project condition  
8 as documented at the time of the preconstruction report.

9       E.       Not later than then (10) CALENDAR DAYS from the Effective Date OWNERS shall  
10 advance a total cash deposit in the sum of One Hundred Thousand Dollars and no cents (\$100,000.00)  
11 to COUNTY for the estimated cost of repairing any damage to the ROADS (hereafter, the "ROAD  
12 REPAIR FUND"), which the COUNTY shall use for inspections and any work associated with this  
13 AGREEMENT and to repair or replace the ROADS in the event that OWNERS fail to complete such  
14 inspections, repairs or replacements in accordance with this Section 3. COUNTY shall have the right to  
15 draw on the ROAD REPAIR FUND in the event OWNERS fail to complete such repairs or replacement  
16 in accordance with Section 3. With respect to the amounts required to be advanced by OWNERS to  
17 COUNTY:

18           i.       Such amounts are an estimate, and in any event not a limitation on OWNERS'  
19 obligation to fully fund the inspections and repairs to or replacement of the Roads pursuant to Section  
20 3.

21           ii.       Such amounts shall not obligate COUNTY to achieve a predetermined result,  
22 including finding that the OWNERS have complied with the MMRP, and

23           iii.       Nothing in this AGREEMENT alters the OWNERS' respective obligations under  
24 the MMRP.

25           iv.       COUNTY shall not be obligated to maintain the ROAD REPAIR FUND in an  
26 interest-bearing account.

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1 v. OWNERS agree that the estimate above is reasonable, and roughly proportional  
2 to the impact of the PROJECT on COUNTY's roads.

3 F. For any invoice issued pursuant to Section 4.I, OWNERS shall remit payment for the full  
4 amount reflected in the invoice within forty-five (45) CALENDAR DAYS of the date the invoice was  
5 issued by COUNTY.

6 G. OWNERS understand, acknowledge, and agree that an amendment to this  
7 AGREEMENT, subject to Section 8 hereof, or subsequent traffic mitigation and/or road repair  
8 agreement is necessary before COUNTY can issue any construction permits for any part of the Fifth  
9 Standard Solar Project described in CUP Nos. 3562 through 3564 beyond the part described in this  
10 AGREEMENT as the PROJECT, including without limitation construction conditionally permitted under  
11 CUP No. 3563, and that COUNTY is under no obligation to issue any such construction permits or  
12 enter into any such amendments or subsequent agreements.

13 **SECTION 4. OBLIGATIONS OF THE COUNTY.**

14 COUNTY shall perform the following obligations pursuant to this AGREEMENT:

15 A. Deposit the ROAD REPAIR FUND upon receipt from OWNERS into the SPECIAL  
16 REVENUE FUND as a separate account and designated as the ROAD REPAIR ACCOUNT ("ROAD  
17 REPAIR ACCOUNT").

18 B. Transmit written confirmation of receipt of the ROAD REPAIR FUND within thirty (30)  
19 CALENDAR DAYS of receipt;

20 C. DIRECTOR shall review the Preconstruction Report and inform OWNERS of any  
21 Damage to the ROADS that would require repair pursuant to state and/or COUNTY standards;

22 D. DIRECTOR shall, upon notification from OWNERS of the completion of construction of  
23 the PROJECT, review the Updated Report to evaluate the roads for any damage caused by the  
24 construction-related traffic as required by Section 3.C, and note any damage to the ROADS not present  
25 at the time of Preconstruction Road Survey Report;

26 E. DIRECTOR shall inform OWNERS of any roads that were identified as damaged in  
27 the updated report and in consultation with COUNTY and Caltrans District 6 and the necessary repairs

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1 and reconstruction of ROADS determined to be caused by PROJECT-related activity to be completed  
2 by OWNERS;

3 F. DIRECTOR shall conduct inspections of all repairs to or replacement of the ROADS  
4 completed by OWNERS upon receipt of notice from OWNERS of the completion of such repair to or  
5 replacement of the ROADS

6 G. DIRECTOR may conduct inspections and repairs to or replacement of the ROADS  
7 should OWNERS fail to repair or replace the ROADS in accordance with Section 3.C. COUNTY shall  
8 be authorized to use all or a portion of the ROAD REPAIR FUND to conduct the repairs to or  
9 replacement of ROADS;

10 H. Notwithstanding anything to the contrary herein, COUNTY shall not be required to  
11 perform any obligations under this AGREEMENT, unless and until OWNERS have complied with their  
12 obligations to advance funds to COUNTY as set forth in Section 3 of this AGREEMENT;

13 I. Upon a determination by DIRECTOR that the funding remaining in the SPECIAL  
14 REVENUE FUND is insufficient to complete repairs to or replacement of ROADS, as required by this  
15 AGREEMENT, DIRECTOR may issue an invoice for the amount of funding DIRECTOR determines to  
16 be reasonably necessary to complete such repairs or replacement of ROADS. Each invoice shall be  
17 paid in full by OWNERS, without deduction or offset, within forty-five (45) CALENDAR DAYS of the  
18 date of receipt of the Invoice. Upon receipt of such funding from OWNERS, DIRECTOR will deposit the  
19 funding in the SPECIAL REVENUE FUND. Without waiving any remedies allowed by law, the  
20 DIRECTOR may withhold the issuance of any permits for the PROJECT, including without limitation a  
21 certificate of occupancy, for failure of OWNERS to pay invoices as required by this Section 4.I.

22 J. Upon completion of all repairs or replacement of ROADS pursuant to this AGREEMENT,  
23 OWNERS may submit a written request to DIRECTOR for a refund of any funds remaining in the  
24 SPECIAL REVENUE FUND. Upon receipt of such a written request from OWNERS, DIRECTOR shall  
25 determine within thirty (30) CALENDAR DAYS whether the funds in the SPECIAL REVENUE FUND  
26 are necessary to ensure completion of any repairs to or replacement of ROADS. If DIRECTOR  
27 determines that funds remaining in the ROAD REPAIR ACCOUNT are necessary to ensure completion

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1 of any repairs to or replacement of ROADS pursuant to the MMRP, DIRECTOR shall issue written  
2 notification of such determination to OWNERS. If DIRECTOR determines that funds remaining in the  
3 SPECIAL REVENUE FUND are not necessary to ensure completion of any repairs to or replacement of  
4 ROADS pursuant to the MMRP and approves of all repairs to or replacement of the ROADS completed  
5 pursuant to this AGREEMENT, DIRECTOR shall cause the funds remaining in the SPECIAL  
6 REVENUE FUND to be refunded to OWNERS within sixty (60) CALENDAR DAYS from the date of  
7 such determination. Upon refund of the funds remaining in the SPECIAL REVENUE FUND to  
8 OWNERS, this AGREEMENT shall terminate, provided that Section 10 shall survive termination of this  
9 AGREEMENT.

10 **SECTION 5. WAIVERS.**

11 Waiver of a breach or default under this AGREEMENT shall not constitute a continuing waiver  
12 or a waiver of a subsequent breach of the same or any other provision of this AGREEMENT.

13 **SECTION 6. SEVERABILITY.**

14 If a court of competent jurisdiction finds that any provision of this AGREEMENT is invalid or  
15 unenforceable, such determination shall not affect the validity and enforceability of any other provision  
16 of this AGREEMENT.

17 **SECTION 7. OWNERS' LEGAL AUTHORITY.**

18 Each individual executing or attesting this AGREEMENT on behalf of each OWNER hereby  
19 covenants, warrants, and represents that (1) he or she is duly authorized to execute or attest and  
20 deliver this AGREEMENT on behalf of OWNERS; and (2) that this AGREEMENT is binding upon  
21 OWNERS.

22 **SECTION 8. MODIFICATION.**

23 Any matters of this AGREEMENT may be modified from time to time by the written consent of  
24 all the PARTIES without, in any way, affecting the remainder.

25 **SECTION 9. NON-ASSIGNMENT.**

26 Neither PARTY shall assign, transfer or subcontract this AGREEMENT nor their rights or duties  
27 under this AGREEMENT without the prior written consent of the other PARTY.

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1           **SECTION 10. HOLD HARMLESS.**

2           OWNERS agree to indemnify, save, hold harmless, and at COUNTY's request, defend the  
3 COUNTY, its officers, agents, and employees from any and all costs and expenses, damages,  
4 liabilities, claims, and losses occurring or resulting to COUNTY in connection with the performance, or  
5 failure to perform, by OWNERS, its officers, agents, or employees under this AGREEMENT, and from  
6 any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any  
7 person, firm, or corporation who may be injured or damaged by the performance, or failure to perform,  
8 of OWNERS, their officers, agents, or employees under this AGREEMENT.

9           **SECTION 11. GOVERNING LAW AND VENUE.**

10          This AGREEMENT shall be deemed to have been entered into in Fresno County, and shall be  
11 interpreted under, and enforced by the laws of the State of California. The AGREEMENT and  
12 obligations of the PARTIES are subject to all laws, orders, rules, and regulations of the authorities  
13 having jurisdiction over this AGREEMENT (or the successors of those authorities). Any suits brought  
14 pursuant to this AGREEMENT shall be filed and heard in courts having jurisdiction and located in the  
15 Fresno County, State of California.

16          **SECTION 12. NOTICES.**

17          Except as otherwise specified herein, all notices, demands, requests or approvals to be sent  
18 pursuant to this AGREEMENT shall be made in writing, and sent to the PARTIES at their respective  
19 addresses specified below or to such other address as a PARTY may designate by written notice  
20 delivered to the other PARTIES in accordance with this Section. All such notices shall be sent by:  
21 (a) personal delivery, in which case notice is effective upon delivery; (b) certified or registered mail,  
22 return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is  
23 confirmed by a return receipt; or (c) nationally recognized overnight courier, with charges prepaid or  
24 charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by  
25 the delivery service.

26 **County:**                           County of Fresno  
27   Department of Public Works and Planning  
28   Attn: Director

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2220 Tulare Street, Sixth Floor  
Fresno, California 93721

**With a copy to:** Office of the Fresno County Counsel  
Attn: Deputy County Counsel Assigned to Land Use Matters  
2220 Tulare Street, Suite 500  
Fresno, CA 93721

**Owners:** Matt Stucky  
RWE Solar Development, LLC  
20 California Street, Suite 500  
San Francisco, CA 94111

**With a copy to:** RWE Solar Development, LLC  
Attn: Legal Department/5<sup>th</sup> Standard  
701 Brazos Street, Suite 1400  
Austin, Texas 78701

For all claims arising out of or related to this Agreement, nothing in this Section 12 establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

**SECTION 13. COUNTERPARTS.**

This AGREEMENT may be signed in counterparts, and shall be deemed effective when all PARTIES have signed the AGREEMENT, or any counterpart thereof.

**SECTION 14. HEADINGS; CONSTRUCTION; STATUTORY REFERENCES.**

The headings of the sections and paragraphs of this AGREEMENT are for convenience only and shall not be used to interpret this AGREEMENT. This AGREEMENT is the product of negotiation between the PARTIES. The language of this AGREEMENT shall be construed as a whole according to its fair meaning and not strictly for or against any PARTY. Any rule of construction to the effect that ambiguities are to be resolved against the drafting PARTY shall not apply in interpreting this AGREEMENT. All references in this AGREEMENT to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the County of Fresno shall be deemed to

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1 include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if  
2 repealed, to such other provisions as may thereafter govern the same subject.

3 **SECTION 15. ENTIRE AGREEMENT.**

4 This AGREEMENT, including Exhibits A and B, attached hereto and incorporated herein by this  
5 reference, represents the full and complete understanding of the PARTIES with respect to the subject  
6 matter hereof, and all preliminary negotiations and oral or written agreements with respect thereto are  
7 merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof.  
8 Any modification of this AGREEMENT will be effective only by a written instrument signed by COUNTY  
9 and OWNERS. No waiver of any provision of this AGREEMENT will be valid unless and until it is in  
10 writing and signed by the PARTY making the waiver. Waiver by either PARTY at any time of a breach  
11 or default of this AGREEMENT shall not be deemed a waiver of or consent to a breach or default of the  
12 same or any other provision of this AGREEMENT. In the event of any inconsistency in interpreting the  
13 documents which constitute this AGREEMENT, the inconsistency shall be resolved by giving  
14 precedence in the following order of priority: (1) the text of this AGREEMENT (excluding Exhibits "A",  
15 and "B"), (2) Exhibit "A", and (3) Exhibit "B".

16 **SECTION 16. JOINT AND SEVERAL LIABILITY.**

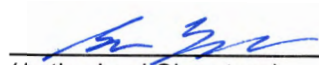
17 Each OWNER shall be jointly and severally liable for the OWNERS' obligations to COUNTY  
18 under this AGREEMENT.

19 **(Signatures on following page.)**

1 IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as  
2 of the day and year first above written.

3 **RWE Solar Development, LLC, a**  
4 **Delaware limited liability company**

**COUNTY OF FRESNO**


5   
6 (Authorized Signature)

7 Sean Logsdon, Vice President  
8 (Name, Title)

  
Brian Pacheco, Chairman of the Board of  
Supervisors of the County of Fresno

9 **Fifth Standard Solar PV, LLC,**  
10 **a Delaware limited liability company**

**ATTEST:**  
Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

11   
12 (Authorized Signature)

13 Sean Logsdon, Vice President  
14 (Name, Title)

By   
Deputy

15 FOR ACCOUNTING USE ONLY

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17 Account No.  
18 Fund No.  
19 Subclass No.  
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