

**INFRASTRUCTURE IMPROVEMENT, MAINTENANCE,
PROTECTION, AND REPAIR AGREEMENT**

County of Fresno – Little Panoche Road

This Infrastructure Improvement, Maintenance, Protection, and Repair Agreement (“**Agreement**”) is made and entered into this 7th day of February, 2017 (“**Effective Date**”), by and between the COUNTY OF FRESNO, a political subdivision of the State of California (“**County**”), and PANOCHE VALLEY SOLAR LLC, a Delaware limited liability company (“**Developer**”). The County and Developer are each a “**Party**” to this Agreement and collectively the County and Developer are “**Parties**” to this Agreement.

RECITALS

A. Developer represents that it proposes to construct and operate the Project on the Property. On May 19, 2015, the Board of Supervisors of the County of San Benito certified the FSEIR and granted various approvals for the Project, subject to certain requirements or conditions.

B. In order to access the Property and to construct, operate, and maintain the Project, Developer desires vehicular access along the Roadway, thereby allowing the transport of equipment, materials, labor, and the like.

C. Pursuant to the FSEIR and related Project approvals, Developer is required to undertake certain activities to improve the Roadway prior to and during Project construction, and to make certain repairs during and following completion of Project construction to restore the Roadway in accordance with the Mitigation Measures.

D. In addition, Developer is required to protect County bridges and culverts, which are located along Little Panoche Road in accordance with the Mitigation Measures.

E. In order to protect the Little Panoche Creek Bridge, Developer proposes to install the Jumper Bridge, which will allow Project truck trips to cross over the Little Panoche Creek without distributing weight to, or impacting in any way, either directly or indirectly, the Little Panoche Creek Bridge. The County of San Benito has adopted an Addendum to the FSEIR to address the Developer’s proposal to install, maintain, and decommission the Jumper Bridge.

F. The Jumper Bridge will be permitted by the County through an encroachment permit that will be issued subject to the Parties entering into this Agreement and Developer complying with all provisions of this Agreement. The Jumper Bridge will not be accepted by the County into its bridge inventory and will always remain the sole property and responsibility of the Developer. Developer will be required to maintain the Jumper Bridge and will be solely responsible for any damage to the Jumper Bridge, in addition to any damage caused to the Little Panoche Creek Bridge as a result of the construction, use, or decommissioning of the Jumper Bridge. Developer shall be required to assume all liability for its, and any third person’s use, of the Jumper Bridge.

G. Developer shall further be solely responsible and will indemnify, defend and hold the County harmless from any claims related in any way to the Improvements constructed by the Developer.

H. To ensure that Developer completes all of the activities required by the Mitigation Measures, County and Developer desire to enter into this Agreement to confirm Developer's obligations to complete the Improvements and repairs required by the Mitigation Measures and ensure that County has adequate financial security in the event that Developer fails to complete those Improvements and repairs.

I. Specifically, this Agreement is intended to memorialize Developer's commitments to: (1) construct the Roadway Improvements; (2) perform the Maintenance and Restoration of the Roadway; and (3) perform the Jumper Bridge Project, in a manner consistent with the requirements of the FEIR and FSEIR.

J. Developer has submitted to the Director, and the Director has, subject to the provisions of this Agreement, approved and stamped, the Roadway Improvement Plans and the Jumper Bridge Project Plans prepared by the Construction Engineer. The Plans are incorporated by reference and made part of this Agreement.

K. County and Developer now wish to memorialize Developer's commitment to complete the Roadway Improvements, Maintenance and Restoration of the Roadway, and the Jumper Bridge Project, including an obligation by Developer to provide financial security in the form of surety bonds and insurance, which adhere to the requirements defined herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, County and Developer agree as follows:

1. DEFINITIONS

For purposes of this Agreement the following terms have the following meanings, provided that, as the context may require, the singular of any term may be read as the plural and the plural as the singular:

(a) **"Approvals"** mean any and all permits, licenses, certificates, authorizations, consents, easements, entitlements, and/or approvals, including, but not limited to, final, non-appealable approval (including any and all applicable administrative orders, decisions, findings, and actions issued by a governmental officer, agency, or authority having regulatory, oversight, or enforcement agency authority over the subject matter), and the payment of any and all taxes, assessments, fees, charges, or giving any other consideration, to obtain any of the same for the Roadway Improvements, Maintenance and Restoration of the Roadway, and the Jumper Bridge Project, pursuant to all relevant Legal Requirements, from those governmental officers, agencies, or authorities having regulatory, oversight, or enforcement authority over the subject matter of this Agreement, including, but not limited to, County, acting in its capacity as a regulatory, oversight, or enforcement agency, officer, or authority.

(b) **“Addendum to the FSEIR”** means the Addendum to the FSEIR adopted by San Benito on November 18, 2016, which assessed the environmental impacts of the Jumper Bridge Project.

(c) **“Bridge Oversight Engineer”** means the structural engineering firm of Cornerstone Structural Engineering Group, a corporation formed under the laws of the State of California, or such other structural engineering firm selected by the Developer and approved by the Director (and Director’s approval of such alternative Bridge Oversight Engineer shall not be unreasonably withheld, conditioned or delayed), which serves as the Developer’s consulting engineer for the Jumper Bridge Project.

(d) **“Caltrans”** means the California Department of Transportation.

(e) **“Completion of Project Construction”** means the date on which the County of San Benito certifies to the Director that the Developer has completed construction of the Project.

(f) **“Construction Contractor”** means Clark Brothers, Inc., a corporation formed under the laws of the State of California, which serves as Developer’s construction contractor for the Roadway Improvements, Maintenance and Restoration of the Roadway, and the Jumper Bridge Project, or such other construction contractor selected by the Developer and approved by the Director (and Director’s approval of such alternative construction contractor shall not be unreasonably withheld, conditioned or delayed).

(g) **“Construction Engineer”** means the engineering, architecture, construction, environmental and consulting firm of Burns & McDonnell Engineering Company, Inc., a corporation organized under the laws of the State of Missouri, or such other construction engineer selected by the Developer and approved by the Director (and Director’s approval of such alternative construction engineer shall not be unreasonably withheld, conditioned or delayed).

(h) **“County Business Day”** means Monday through Friday, inclusive, but excluding any day which is recognized as a legal holiday by the County of Fresno. If this Agreement specifies a day or date by which a certain action is to be taken or notice to be given, then the action to be taken or notice to be given must be completed by 5:00 p.m. (Pacific time) on such date.

(i) **“Day”** means a calendar day unless specified to the contrary.

(j) **“Default”** means the occurrence of any event described in Section 14 of this Agreement.

(k) **“Department”** means the Fresno Department of Public Works and Planning.

(l) **“Director”** means the Director of the Department, or his or her designee.

(m) **“FEIR”** means the Final Environmental Impact Report for the Project certified by the Board of Supervisors of the County of San Benito on October 12, 2010.

(n) **“FSEIR”** means the Final Supplemental Environmental Impact Report for the Project certified by the Board of Supervisors of the County of San Benito on May 19, 2015.

(o) **“Guaranty Period”** means the time period that the Guaranty described in Section 9 of this Agreement is in effect.

(p) **“Improvements”** means the Roadway Improvements, the Maintenance and Restoration of the Roadway, and the Jumper Bridge Project.

(q) **“Improvement Plans”** means the Roadway Improvement Plans and the Jumper Bridge Project Plans.

(r) **“Jumper Bridge”** means a temporary jumper bridge that will be constructed over the Little Panoche Creek Bridge in accordance with the Jumper Bridge Project Plans, and is designated as Acrow Bridge Drawing Number AB1856.

(s) **“Jumper Bridge Project”** means the design, installation, maintenance, and decommissioning of the Jumper Bridge.

(t) **“Jumper Bridge Project Plans”** mean those plans submitted to and approved by the Director to install, maintain, and decommission the Jumper Bridge.

(u) **“Legal Requirements”** mean any and all then-current, applicable provisions of (i) the United States Constitution and/or the Constitution of the State, (ii) the federal, State, County, statutes, laws, codes (including, but not limited to, building codes, such as the California Building Code (Title 24 of the CCR), ordinances (including, but not limited to, building and construction ordinances (including grading or excavation requirements thereunder), zoning ordinances or development standards, rules, requirements, regulations, guidelines to the extent that such guidelines have the legal effect of being mandatory, or required compliance with any mitigation measures related to California Environmental Quality Act, which mitigation measures are conditions of obtaining any Approvals, (iii) the County charter, and/or (iv) general plans or specific plans, and/or (v) any and all applicable administrative orders, decisions, findings, and actions issued by a governmental officer, agency, or authority having regulatory, oversight, or enforcement agency authority over the subject matter, and/or (vi) any and all judicial decisions, actions, rulings, orders, decrees, judgments, or directives of a court of competent jurisdiction having authority over the subject matter, respectively, including any and all similar administrative or judicial actions having similar effect, with respect to any or all of the foregoing in items (i) through and including (vi), herein, with respect to this Agreement and any and all agreements and legal instruments referenced herein (including any and all of the transactions contemplated hereunder, and any and all documents referenced herein), the Parties, and the Roadway Improvements, the Maintenance and Restoration of the Roadway, and the Jumper Bridge Project. Any reference to any specific Legal Requirement elsewhere in this Agreement is included within this definition of “Legal Requirements.”

(v) **“Maintenance and Restoration of the Roadway”** means those obligations described in MM TR-1.2, attached hereto and incorporated herein by reference as Exhibit B, that are applicable to the periods during construction, including (i) monitoring and evaluating

pavement conditions of the Roadway and undertaking roadway repairs as necessary to ensure it safely accommodates the Project related traffic, and (ii) the monitoring, protection, and plating of the culverts along the Roadway, and those obligations described in MM TR-1.3, attached hereto in Exhibit B, that are applicable to the period following construction, including restoring all public roads, easements, rights-of-way and infrastructure within the public road right-of-way that have been damaged due to Project-related construction activities or traffic. Restoration shall be to roadway conditions that existed prior to commencement of construction of the Project. For purposes of determining the roadway conditions that existed prior to the commencement of construction of the Project, the Parties agree that the PCI Study prepared by the Department and dated September 20, 2016 shall establish pre-Project conditions. If there are conflicts between the descriptions of MM TR-1.2 and MM TR-1.3 in the FSEIR and this paragraph, the description in the FSEIR shall control, except that the Parties agree that the PCI Study shall be used to establish pre-Project conditions.

(w) **“Mitigation Measures”** mean Mitigation Measure TR-1.2 and Mitigation Measure TR-1.3 as adopted as part of the FSEIR, each of which is set forth in Exhibit “B,” which is attached hereto and incorporated herein by reference.

(x) **“Project”** means a utility-scale, approximately 247 megawatt, photovoltaic solar energy generating facility, known as the Panoche Valley Solar Facility to be located on the Property.

(y) **“Property”** means private lands owned by Developer located in San Benito County, California, on which the Project will be constructed.

(z) **“Roadway”** means a County-owned and maintained public roadway known as Little Panoche Road located between Interstate 5 and Panoche Road, as generally depicted in Exhibit A, which is attached hereto and incorporated herein by reference. The Roadway includes the culverts that are located along and under the Little Panoche Road.

(aa) **“Roadway Improvements”** means the improvement of the Roadway to a T.I. of 7.0 as required by MM TR-1.2.

(bb) **“Security”** means the Developer’s Performance Security, Construction Contractor’s Performance Bonds, and Construction Contractor’s Payment Bonds, referenced in Section 8 of this Agreement.

(cc) **“T.I.”** means traffic index, which is a measure of the number of equivalent single axle loads expected in a traffic lane over the pavement design life of a road.

(dd) **“Work Site”** means the Roadway and areas immediately adjacent to the Roadway.

2. TERM OF AGREEMENT

The term of this Agreement shall commence on the Effective Date and shall terminate thirty-five (35) days after the date on which the latest of the following events occurs: the expiration of the Guaranty Period, or the Director's issuance of the Acknowledgement of Completion of Maintenance and Restoration of Roadway, or the Director's issuance of the Acknowledgement of Completion of the Jumper Bridge Project ("**Expiration Date of this Agreement**").

3. DEVELOPER'S OBLIGATION TO CONSTRUCT IMPROVEMENTS

3.1 Completion of Roadway Improvements and Maintenance and Restoration of the Roadway. Developer, at its sole cost and expense, and in compliance with all provisions of this Agreement shall design, furnish, install, and construct all of the Roadway Improvements in conformance with the Roadway Improvement Plans and complete the Maintenance and Restoration of the Roadway. Notwithstanding the preceding, Developer shall not be required to commence construction of the Roadway Improvements unless and until the Director has issued the permit(s) necessary to install the Jumper Bridge and such permit(s) are effective. The determination of the Director shall be final as to whether the performance of the work, and any material or workmanship employed in connection therewith meets the Roadway Improvement Plans and satisfies the Developer's obligation to complete the Maintenance and Restoration of the Roadway. If the Director determines that the performance of the work, or any material or workmanship is deficient, in failing to conform to the Roadway Improvement Plans or complete the Maintenance and Restoration of the Roadway, he shall notify Developer of any such deficiencies in writing and propose specific cures. Developer shall cure any and all deficiencies identified by the Director within thirty (30) days after receiving Director's written notification, subject to the provisions of Section 3.10.

3.2 Installation, Maintenance, and Decommissioning of Jumper Bridge. Developer, at its sole cost and expense, and in compliance with all provisions this Agreement shall install, maintain, and decommission the Jumper Bridge in conformance with the Jumper Bridge Plans, the Jumper Bridge manufacturer's recommendations, and in accordance with recommendations which may be made from time to time by the Caltrans, if any and to the extent implementation of such recommendations is legally required. Notwithstanding the preceding, Developer shall have no obligation, nor any right, to install the Jumper Bridge unless and until the Director has issued the permit(s) necessary to construct the Roadway Improvements and such permit(s) are effective. The determination of the Director shall be final as to whether the performance of the work, and any material or workmanship employed in connection therewith meets the Jumper Bridge Plans, the Jumper Bridge manufacturer's recommendations, and recommendations made by Caltrans. If the Director determines that the performance of the work, or any material or workmanship related to the Jumper Bridge is deficient, in failing to conform to the Jumper Bridge Plans, the Jumper Bridge manufacturer's recommendations, or recommendations made by Caltrans, if any and to the extent implementation such recommendations are legally required, he shall notify Developer of any such deficiencies in writing. Developer shall cure any and all deficiencies identified by the Director within thirty (30) days after receiving Director's written notification, subject to the provisions of Section 3.10.

3.3 Compliance with Laws. Developer, at its sole cost and expense, shall design, furnish, construct, install and maintain the Roadway Improvements, conduct the Maintenance and Restoration of the Roadway, and install, maintain, and decommission the Jumper Bridge, all in accordance with all Legal Requirements and (i) the Standard Specifications of the California Department of Transportation (2010 ed.), where applicable, as determined by the Director; and (ii) conditions of approval of any permit issued for the Roadway Improvements, Maintenance and Restoration of the Roadway, or Jumper Bridge Project.

3.4 Repair and Replacement of Damaged Public Facilities. Developer shall, at its sole cost and expense, repair or replace all public improvements, public utility facilities, surveying monuments and other public facilities located within the County that are destroyed or damaged as a result of any work performed pursuant to this Agreement. Developer shall promptly notify the Director of such damage, and in no event shall such notice be delivered to Director more than five (5) days after such damage occurs or after becoming aware of such damage. Developer shall direct and require its Construction Contractor to promptly notify Developer of any damage or destruction to public improvements, public utility facilities, surveying monuments or other public facilities. Prior to conducting repairs or replacement of any public facility, Developer shall first obtain Director's approval for such work.

3.5 Developer's Responsibility for Roadway Until Acknowledgement of Completion of Roadway Improvements. Until Director issues Acknowledgement of Completion of the Roadway Improvements, Developer shall be responsible for the maintenance of the Roadway and, as between the County and Developer, shall bear all risks of loss or damage to the Roadway or to a third person, resulting from such person's use of the Roadway, except to the extent such loss or damage is the result of the County's or such third person's negligence, willful misconduct or criminal conduct. County shall not have any liability for any accident, loss or damage to the Roadway prior to the Acknowledgement of Completion of the Roadway Improvements. County's Acknowledgement of Completion of the Roadway Improvements shall not constitute a waiver of any defects in the Roadway or Developer's obligation to repair or replace such defects as provided in Section 9 of this Agreement.

3.6 Developer's Responsibility for Maintenance and Restoration of the Roadway. Commencing upon Director's issuance of the Acknowledgement of Completion of the Roadway Improvements, Developer shall initiate its performance of the Maintenance and Restoration of the Roadway. Within one hundred eighty (180) days after Completion of Project Construction, as defined in Section 1(e) of this Agreement, Developer shall complete restoration of the Roadway to its pre-Project condition, as required by Section 1(v) and MM TR-1.3.

3.7 Developer's Responsibility for Jumper Bridge and Little Panoche Creek Bridge.

(a) Developer, at its sole cost and expense, shall be solely responsible for the maintenance of the Jumper Bridge and, as between the County and Developer, shall bear all risk of loss or damage to any property, or injury to any person or property, including bodily injury and death, with respect to any person, which may use the Jumper Bridge, except to the extent such loss, damage or injury arises from County's or third person's gross negligence, willful misconduct or, criminal conduct. County shall not have any liability for any accident, loss or damage to any person or entity which may use the Jumper Bridge, or any liability for any

accident, loss or damage to the Jumper Bridge itself. In addition, Developer shall be responsible for any damage done to the Little Panoche Creek Bridge, which arises from the installation, maintenance, use, or decommissioning of the Jumper Bridge. In addition, Developer shall engage the Bridge Oversight Engineer to update its report dated October 20, 2016, to assess whether Project related vehicle traffic has caused damage to the Little Panoche Creek Bridge prior to the installation of the Jumper Bridge ("Pre-Project Condition of Little Panoche Creek Bridge"). Developer shall provide to Director an exact copy of the Bridge Oversight Engineer's update to its report dated October 20, 2016, within five (5) days of receipt. Developer shall be responsible for any damage done to the Little Panoche Creek Bridge identified in the updated report from the Bridge Oversight Engineer (the October 20, 2016 report and the updated report shall collectively be referred to as the "**Bridge Report**"). The Parties acknowledge that the October 20, 2016, report found "no significant changes to the condition of the structure or other signs of structural distress from what had previously been documented by Caltrans and previously observed by Cornerstone."

(b) The Parties acknowledge that there is a risk that a major flood (anticipated to be 50+ year event), earthquake, or other natural occurrence ("Natural Occurrence"), could damage the existing Little Panoche Creek Bridge or both the Little Panoche Creek Bridge and the Jumper Bridge. Repair to Little Panoche Creek Bridge in the event of a Natural Occurrence shall be in accordance with this Section 3.7(b).

(i) If the Jumper Bridge causes or exacerbates damage to the Little Panoche Creek Bridge during or after a Natural Occurrence, then Developer shall be responsible for repairing or replacing Little Panoche Creek Bridge and otherwise bringing the Little Panoche Creek Bridge back to the Pre-Project Condition of Little Panoche Creek Bridge. If Little Panoche Creek Bridge sustains damage from a Natural Occurrence, but that damage is not caused or exacerbated by the Jumper Bridge, Developer shall have no obligation to repair or replace Little Panoche Creek Bridge. The Director shall make the determination in writing whether the Jumper Bridge caused or exacerbated the damage to Little Panoche Creek Bridge.

(ii) If Little Panoche Creek Bridge is damaged but the Jumper Bridge remains in a safe condition, as determined by the Director, then the Jumper Bridge may remain in place and the repair or replacement of Little Panoche Creek Bridge may occur after the Jumper Bridge is decommissioned, as described below.

(1) In the event the Jumper Bridge remains in a safe condition and the Director determines the Jumper Bridge caused or exacerbated the damage resulting during or after the Natural Occurrence, Developer may object in writing to the Director's determination within ten (10) days, and the Parties shall meet and confer in good faith for thirty (30) days from the date of the Developer's written objection to determine the cause of the damage to Little Panoche Creek Bridge. Within thirty (30) days of either Director's written determination, or, if Developer objected in writing to the Director's determination, within thirty (30) days of the conclusion of the meet and confer process, Developer shall deliver written plans to the Director specifying how the damage sustained by the Little Panoche Bridge will be repaired or replaced by the Developer ("LPCB Natural Occurrence Repair Plans"). The LPCB Natural Occurrence Repair Plans shall specify, among other things, (1) the time required to complete the repairs, and (2) the estimated cost to the Developer to complete the repairs. The

Director shall in writing accept, conditionally accept, or reject the LPCB Natural Occurrence Repair Plans within ten (10) County Business Days of receipt. If the Director issues written notice of his acceptance or conditional acceptance of the LPCB Natural Occurrence Repair Plans to Developer, Developer shall complete the repairs within the time specified by the LPCB Natural Occurrence Repair Plans upon receipt of all Approvals required to complete the repairs, or such later date as may be specifically authorized in writing by the Director pursuant to Section 3.10 of this Agreement. In conditionally accepting the LPCB Natural Occurrence Repair Plans, the Director may impose reasonable related conditions. If Director rejects the LPCB Natural Occurrence Repair Plans, he or she shall specify in writing the deficiencies of the LPCB Natural Occurrence Repair Plans. Within twenty (20) days of receipt of the Director's written rejection of the LPCB Natural Occurrence Repair Plans, Developer shall submit written revisions to the LPCB Natural Occurrence Repair Plans ("Revised LPCB Natural Occurrence Repair Plans"), which cure the deficiencies specified by the Director's written rejection of the LPCB Natural Occurrence Repair Plans. The Revised LPCB Natural Occurrence Repair Plans shall include, if applicable, revisions to the (1) the time required to complete the repairs, and (2) the estimated cost to the Developer to complete the repairs. The Director shall accept, conditionally accept, or reject the Revised LPCB Natural Occurrence Repair Plans within ten (10) County Business Days of receipt. If the Director issues written notice of his acceptance or conditional acceptance of the Revised LPCB Natural Occurrence Repair Plans to Developer, Developer shall complete the repairs within the time specified by the Revised LPCB Natural Occurrence Repair Plans upon receipt of all Approvals required to complete the repairs, or such later date as may be specifically authorized in writing by the Director pursuant to Section 3.10 of this Agreement. In conditionally accepting the Revised LPCB Natural Occurrence Repair Plans, the Director may impose reasonable related conditions. If Director rejects the Revised LPCB Natural Occurrence Repair Plans, County may, in the Director's discretion, pursue the remedies available to County under this Agreement, including but not limited to calling upon the Security provided pursuant to Section 8 and to complete such Roadway Improvements in whatever manner the Director shall decide, and such other legal or equitable remedies as may also be available.

(2) If the Director determines that the Jumper Bridge did not cause or exacerbate damage to Little Panoche Creek Bridge resulting during or after the Natural Occurrence, and the Jumper Bridge remains safe, then, the Director, in his or her discretion, on behalf of the County may elect to maintain the Jumper Bridge in place beyond the date Developer otherwise would have decommissioned the Jumper Bridge. However, if the County elects to maintain the Jumper Bridge in place beyond the time period the Developer otherwise would have decommissioned it, the County shall be responsible for maintaining and repairing the Jumper Bridge until such time that the Director may direct the Developer to decommission the Jumper Bridge. Developer shall complete decommissioning of the Jumper Bridge within sixty (60) days of receiving direction from the Director to decommission the Jumper Bridge. County acknowledges that the Jumper Bridge has been engineered for a five year life and thus Developer must decommission the Jumper Bridge no later than five years after its initial installation. In the event the County elects to maintain the Jumper Bridge and this results in an increased cost to Developer, County and Developer shall negotiate in good faith an amendment to this Agreement to fairly compensate Developer for increased costs.

(iii) If both Little Panoche Creek Bridge and the Jumper Bridge are damaged such that Little Panoche Road must be closed, as determined by the Director, then the

Developer shall immediately take action to re-open Little Panoche Road within seven (7) days, as approved by the Director. County shall cooperate in such efforts by timely reviewing plans and issuing any necessary permits. If re-opening Little Panoche Road within seven (7) days requires an interim repair or replacement, once the interim repair is made or interim bridge is in place, Developer shall diligently pursue plans for and construction of a permanent replacement bridge. During the time in which the Developer is diligently pursuing plans for and construction of a permanent replacement bridge, it shall continuously maintain an interim bridge in place.

3.8 Timing of Installation and Completion of Roadway Improvements. Developer shall install and complete the Roadway Improvements pursuant to this Agreement not later than May 5, 2017, or such later date as may be specifically authorized in writing by the Director pursuant to Section 3.10 of this Agreement. To allow Developer to complete the Roadway Improvements not later than May 5, 2017, the Director shall use his or her best efforts to issue all permits necessary to commence construction within one (1) day of the Effective Date, provided that Developer has paid all applicable fees and complied with Section 3.11. In the event Developer fails or refuses to install and complete the Roadway Improvements on or before the required date, County shall have the option, exercisable in the Director's discretion (after complying with the notice requirements set forth in Section 5, except in the event of an immediate threat to public health and safety in which case only telephonic notice shall be required), to call upon the Security provided pursuant to Section 8 and to complete such Roadway Improvements in whatever manner the Director shall decide. If (i) Developer does not install and complete such Roadway Improvements within the notice period provided in Section 5, and (ii) County completes or causes such Roadway Improvements to be completed, then County may recover any and all costs and expenses incurred thereby from Developer, or Developer's surety, or both, or by calling upon the Security provided pursuant to Section 8. In no event may County recover in an amount that exceeds its actual costs and expenses incurred as a result of its completion of such Roadway Improvements.

3.9 Timing of Installation, Maintenance, and Decommissioning of the Jumper Bridge. Developer shall install the Jumper Bridge pursuant to this Agreement not later than May 5, 2017, and shall decommission the Jumper Bridge not later than September 30, 2019, or such later date as may be specifically authorized in writing by the Director pursuant to Sections 3.7 or 3.10 of this Agreement. To allow Developer to complete the Jumper Bridge not later than May 5, 2017, the Director shall use his or her best efforts to issue all permits necessary to commence construction within one (1) day of the Effective Date, provided that Developer has paid all applicable fees and complied with Section 3.11. Developer shall maintain the Jumper Bridge upon installation thereof through the date the Jumper Bridge is decommissioned, in accordance with the Jumper Bridge Project Plans. In the event Developer fails or refuses to maintain or decommission the Jumper Bridge as required by this Agreement, County shall have the option, exercisable in the Director's discretion (after complying with the notice requirements set forth in Section 5, except in the event of an immediate threat to public health and safety in which case only telephonic notice shall be required), to call upon the Security provided pursuant to Section 8 and to complete such maintenance or decommissioning in whatever manner Director shall decide. If (i) Developer does not complete the maintenance or decommissioning of the Jumper Bridge within the notice period provided in Section 5, and (ii) County completes or causes such maintenance or decommissioning to be completed, then County may recover any and all costs and expenses incurred thereby from Developer, or Developer's surety, or both, or by calling

upon the Security provided pursuant to Section 8. In no event may County recover in an amount that exceeds its actual costs and expenses incurred as a result of its completion of the maintenance or decommissioning the Jumper Bridge.

3.10 Time Extensions. So long as there is not an event of Default by Developer under this Agreement, the Director, in his or her reasonable discretion (which shall not be unreasonably withheld, conditioned or delayed), may approve in writing a request for extension of the time required for construction of the Roadway Improvements or construction or decommissioning of the Jumper Bridge (including any repairs or replacement to Little Panoche Creek Bridge), upon Developer's showing of good cause in writing. A request for an extension must be made not less than five (5) County Business Days prior to the date which Developer wants to extend. Good cause may include, but not necessarily be limited to, delay resulting from a *force majeure* as defined in Section 17. The Director's determination of whether good cause for an extension of time exists shall be final and binding. In approving a request for time extension, the Director may impose reasonable related conditions, including but not limited to, requiring Developer to furnish new or modified security guaranteeing performance of this Agreement, as extended, in an increased amount necessary to compensate for any projected increase in the estimated total cost of Improvements, as determined by the Director.

3.11 Approvals. Developer, at its sole cost and expense, shall obtain all necessary permits and licenses for the design, construction, installation, maintenance, and decommissioning, as applicable, of the Roadway Improvements, Maintenance and Restoration of the Roadway, and Jumper Bridge Project, give all necessary notices (other than those notices required to be given by the County or other agency), and pay all applicable fees. The Director shall not issue permits to Developer for any of the Improvements to be constructed under this Agreement, until the Director has received, and has had a full and fair opportunity to review, the fully executed Engineer of Record's Certificate, including Conditional License for Work Product, required by Section 4, the Developer's Performance Security, Construction Contractor's Performance Bonds, and the Construction Contractor's Payment Bonds, required by Section 8, and the written Guaranty required by Section 9, and the insurance certificates required by Section 12.

4. LICENSE TO USE ROADWAY IMPROVEMENT PLANS

Developer shall cause its Construction Engineer, as engineer of record with respect to the Roadway Improvement Plans and Jumper Bridge Project Plans, to execute and deliver to County the certificate, including a limited (but only to the extent expressly stated in this Section 4), non-exclusive, royalty-free and perpetual license to use work product, in the form and substance of the Engineer of Record's Certificate, including License for Work Product, Regarding Roadway Improvement Plans and Jumper Bridge Project Plans for Infrastructure Improvement, Maintenance, Protection, And Repair Agreement (County of Fresno – Little Panoche Road), as set forth in Exhibit C hereto. The use of the work product shall be limited to the Roadway Improvements and the Jumper Bridge Project, conditioned on County's express understanding that its alteration of the work product without the involvement of the Construction Engineer is at County's sole risk and without liability or legal exposure to the Construction Engineer or anyone working by or through the Construction Engineer. The work product cannot be used for any

projects other than the Roadway Improvements and the Jumper Bridge Project without Construction Engineer's express written consent, which will not be unreasonably withheld, and appropriate reasonable compensation.

5. INSPECTIONS AND ACKNOWLEDGEMENT OF COMPLETION OF ROADWAY IMPROVEMENTS

5.1 Access for Inspections. Developer shall at all times maintain proper facilities and safe access for inspection by County of the Roadway Improvements.

5.2 Completion and Acknowledgement.

(a) Upon Developer's determination that it has completed the Roadway Improvements in compliance with the Roadway Improvement Plans, and all applicable Legal Requirements, as determined by the Director, Developer shall submit written notice of completion of the Roadway Improvements to the Director.

(b) Within thirty (30) days of receipt of such written notice, the Director, or his or designee, shall conduct such inspections as he or she deems appropriate, to determine whether the Roadway Improvements have been completed in accordance with the Roadway Improvement Plans, and all applicable Legal Requirements. If the Director determines that the Roadway Improvements are complete, he shall issue written acknowledgement thereof to Developer within five (5) County Business Days following the completion of the foregoing inspections (the "**Acknowledgement of Completion of Roadway Improvements**").

(c) If the Director determines that the Roadway Improvements are not complete, he shall issue written notification thereof to the Developer within five (5) County Business Days following the completion of the foregoing inspections, which shall identify any deficiencies in writing and actions necessary to cure the deficiencies. Upon receipt of this written notification, Developer shall complete within thirty (30) days all curative actions identified by the Director as needed in order to satisfactorily complete the Roadway Improvements. Upon a showing of good cause in writing by Developer not less than twenty-five (25) days after receiving Director's written notification of deficiencies, Director shall approve an extension of the time period for Developer to cure identified deficiencies. The Director's determination of whether good cause for an extension of time exists shall be final and binding. To the extent there are disagreements regarding alleged deficiencies, County and Developer shall meet and confer prior to County pursuing the remedies available to County under this Agreement. If Developer does not complete the Roadway Improvements within such time period, County may, in the Director's discretion, pursue the remedies available to County under this Agreement, including but not limited to calling upon the Security provided pursuant to Section 8 and to complete such Roadway Improvements in whatever manner the Director shall decide, and such other legal or equitable remedies as may also be available.

(d) Developer shall bear all costs of, and shall prepay any applicable County fees for, any inspections the Director determines to be required.

6. INSPECTIONS AND ACKNOWLEDGEMENT OF COMPLETION OF MAINTENANCE AND RESTORATION OF THE ROADWAY.

6.1 Access for Inspections. Developer shall at all times maintain proper facilities and safe access for inspection by County of the Maintenance and Restoration of the Roadway.

6.2 Completion and Acknowledgement.

(a) Upon Developer's determination that it has completed the Maintenance and Restoration of the Roadway in accordance with the requirements of this Agreement, and all applicable Legal Requirements, as determined by the Director, Developer shall submit written notice of completion of the Maintenance and Restoration of the Roadway to the Director.

(b) Within thirty (30) days of receipt of such written notice and written proof of one year guaranty, the Director shall conduct such inspections as he or she deems appropriate, to determine whether the Maintenance and Restoration of the Roadway has been completed in accordance with the requirements of this Agreement, and all applicable Legal Requirements, as determined by the Director. If the Director determines that the Maintenance and Restoration of the Roadway is complete, he or she shall issue written acknowledgement thereof to Developer within five (5) County Business Days following the completion of the foregoing inspections (the "**Acknowledgement of Completion of Maintenance and Restoration of Roadway**").

(c) If the Director determines that the Maintenance and Restoration of the Roadway is not complete, he or she shall issue written notification thereof to the Developer within five (5) County Business Days following the completion of the foregoing inspections, which shall identify any deficiencies in writing and actions necessary to cure the deficiencies. Upon receipt of this written notification, Developer shall complete within thirty (30) days all curative actions identified by the Director as needed in order to complete the Maintenance and Restoration of the Roadway. Upon a showing of good cause in writing by Developer not less than twenty-five (25) days after receiving Director's written notification of deficiencies, Director shall approve an extension of the time period for Developer to cure identified deficiencies. The Director's determination of whether good cause for an extension of time exists shall be final and binding. To the extent there are disagreements regarding alleged deficiencies, County and Developer shall meet and confer prior to County pursuing the remedies available to County under this Agreement. If Developer does not complete the Maintenance and Restoration of the Roadway within such time period, County may, in the Director's discretion, pursue the remedies available to County under this Agreement, including but not limited to calling upon the Security provided pursuant to Section 8 and to complete such Maintenance and Restoration of the Roadway in whatever manner the Director shall decide, and such other legal or equitable remedies as may also be available.

(d) Developer shall bear all costs of, and shall prepay any applicable County fees for, any inspections the Director determines to be required.

7. INSPECTIONS AND DECOMMISSIONING OF JUMPER BRIDGE

7.1 Access for Inspections. Developer shall at all times maintain proper facilities and safe access for inspection of the Jumper Bridge by Caltrans and County.

7.2 Inspection of Jumper Bridge Following Installation.

(a) Upon Developer's determination that it has completed installation of the Jumper Bridge in accordance with the Jumper Bridge Project Plans, and all applicable County and other governmental standards and Legal Requirements, as determined by the Director, Developer shall submit written notice of completion of installation to the Director along with a certificate from its Bridge Oversight Engineer that certifies that the Jumper Bridge has been installed in accordance with the Jumper Bridge Plans.

(b) Within thirty (30) days of receipt of such written notice, the Director shall conduct or cause to be conducted such inspections as he or she deems appropriate, to determine whether the Jumper Bridge has been installed in accordance with the Jumper Bridge Project Plans, and all applicable County and other governmental standards and Legal Requirements. If the Director determines that the Jumper Bridge has been installed in accordance with the Jumper Bridge Project Plans, he or she shall issue written acknowledgement thereof to Developer within five (5) County Business Days following the completion of the foregoing inspections (the **"Acknowledgement of Installation of the Jumper Bridge"**).

(c) If the Director determines that the Jumper Bridge has not been installed in accordance with the Jumper Bridge Plans and all applicable County and other governmental standards and Legal Requirements, he or she shall issue written notification thereof to the Developer within five (5) County Business Days following the completion of the foregoing inspections, which shall identify any deficiencies in writing and actions necessary to cure the deficiencies. Upon receipt of this written notification, Developer shall complete within thirty (30) days all curative actions identified by the Director as needed in order to complete the installation of the Jumper Bridge. Upon a showing of good cause in writing by Developer not less than twenty-five (25) days after receiving Director's written notification of deficiencies, Director shall approve an extension of the time period for Developer to cure identified deficiencies. The Director's determination of whether good cause for an extension of time exists shall be final and binding. To the extent there are disagreements regarding alleged deficiencies, County and Developer shall meet and confer prior to County pursuing the remedies available to County under this Agreement. If Developer does not complete the installation of the Jumper Bridge within such time period, County may, in the Director's discretion, pursue the remedies available to County under this Agreement, including but not limited to calling upon the Security provided pursuant to Section 8 and to complete the Jumper Bridge Project in whatever manner the Director shall decide, and such other legal or equitable remedies as may also be available.

(d) Developer shall bear all costs of, and shall prepay any applicable County fees for, any inspections the Director determines to be required.

7.3 Completion and Acknowledgement.

(a) Upon Developer's determination that it has completed the decommissioning component of the Jumper Bridge Project in accordance with the Jumper Bridge Project Plans, and all applicable County and other governmental standards and Legal Requirements, including, but not limited to, repairing or replacing Little Panoche Creek Bridge and otherwise bringing the Little Panoche Creek Bridge back to the Pre-Project Condition of the Little Panoche Creek Bridge, as determined by the Director, Developer shall submit written notice of completion to the Director along with a certificate from its Bridge Oversight Engineer that certifies that the Jumper Bridge has been completed in accordance with the Jumper Bridge Plans.

(b) Within 30 days of receipt of such written notice, the Director shall conduct or cause to be conducted such inspections as he or she deems appropriate, to determine whether the Jumper Bridge Project has been completed in accordance with the Jumper Bridge Project Plans, and all applicable County and other governmental standards and Legal Requirements. Such inspection shall include an assessment of whether the existing Little Panoche Creek Bridge has been damaged as a result of the Jumper Bridge Project or use of the Jumper Bridge. If the Director determines that the Jumper Bridge Project is complete and that the Little Panoche Creek Bridge has not been damaged, he shall issue written acknowledgement thereof to Developer within five (5) County Business Days following the completion of the foregoing inspections (the **"Acknowledgement of Completion of the Jumper Bridge Project"**).

(c) If Director determines that the existing Little Panoche Creek Bridge has been damaged as a result of the Jumper Bridge Project or use of the Jumper Bridge, he or she shall issue written notification thereof to the Developer within five (5) County Business Days following the completion of the foregoing inspections, which shall identify the damage sustained by the Little Panoche Creek Bridge in writing. When assessing whether Little Panoche Creek Bridge has been damaged as a result of the Jumper Bridge Project or use of the Jumper Bridge, Director shall consider the Bridge Report for purposes of determining the Pre-Project Condition of Little Panoche Creek Bridge. The Director's written determination shall state whether the damage caused to the Little Panoche Creek Bridge renders it unsafe, impassable and in need of immediate repair or replacement in order to re-open Little Panoche Road.

(d) If the Director determines that the Little Panoche Creek Bridge has been damaged but is safe and the Little Panoche Road may be opened prior to completion of the repairs, Developer shall have ten (10) days to submit a written objection to the Director's determination. If Developer objects to the Director's determination or any portion thereof, the Parties shall meet and confer in good faith for fifteen (15) days to agree on the extent of damage, if any. Within thirty (30) days of either Director's written notification, or, if Developer objected to the Director's determination, within thirty (30) days of the conclusion of the meet and confer process, Developer shall deliver written plans to the Director specifying how the damage sustained by the Little Panoche Bridge will be repaired by the Developer ("LPCB Repair Plans"). The LPCB Repair Plans shall specify, among other things, (1) the time required to complete the repairs, and (2) the estimated cost to the Developer to complete the repairs. The Director shall in writing accept, conditionally accept, or reject the LPCB Repair Plans within ten (10) County Business Days of receipt. If the Director issues written notice of his acceptance or conditional acceptance of the LPCB Repair Plans to Developer, Developer shall complete the

repairs within the time specified by the LPCB Repair Plans upon receipt of all Approvals required to complete the repairs, or such later date as may be specifically authorized in writing by the Director pursuant to Section 3.10 of this Agreement. In conditionally accepting the LPCB Repair Plans, the Director may impose reasonable related conditions. If Director rejects the LPCB Repair Plans, he shall specify in writing the deficiencies of the LPCB Repair Plans. Within twenty (20) days of receipt of the Director's written rejection of the LPCB Repair Plans, Developer shall submit written revisions to the LPCB Repair Plans ("Revised LPCB Repair Plans"), which cure the deficiencies specified by the Director's written rejection the LPCB Repair Plans. The Revised LPCB Repair Plans shall include, if applicable, revisions to the (1) the time required to complete the repairs, and (2) the estimated cost to the Developer to complete the repairs. The Director shall accept, conditionally accept, or reject the Revised LPCB Repair Plans within ten (10) County Business Days of receipt. If the Director issues written notice of his acceptance of the Revised LPCB Repair Plans to Developer, Developer shall complete the repairs within the time specified by the Revised LPCB Repair Plans upon receipt of all Approvals required to complete the repairs, or such later date as may be specifically authorized in writing by the Director pursuant to Section 3.10 of this Agreement. In conditionally accepting the LPCB Repair Plans, the Director may impose reasonable related conditions. If Director rejects the Revised LPCB Repair Plans, County may, in the Director's discretion, pursue the remedies available to County under this Agreement, including but not limited to calling upon the Security provided pursuant to Section 8 and to complete the Jumper Bridge Project in whatever manner the Director shall decide, and such other legal or equitable remedies as may also be available.

(e) If the Director determines that the Little Panoche Creek Bridge is unsafe such that it is impassable and in need of repair or replacement, then, upon approval by the Director, which shall not be unreasonably withheld, the Developer may leave the Jumper Bridge in place during the time that plans for repair or replacement are prepared in order to maintain open travel over Little Panoche Road. The procedures and timeline for preparing plans and conducting construction described in Section 7.3(d) shall apply.

(f) If the Director determines that the Jumper Bridge has not been completed in accordance with the Jumper Bridge Plans and all applicable County and other governmental standards and Legal Requirements, he shall issue written notification thereof to the Developer within five (5) County Business Days following the completion of the foregoing inspections, which shall identify any deficiencies in writing and actions necessary to cure the deficiencies. Upon receipt of this written notification, Developer shall complete within thirty (30) days all curative actions identified by the Director as needed in order to complete the Jumper Bridge Project. Upon a showing of good cause in writing by Developer not less than twenty-five (25) days after receiving Director's written notification of deficiencies, Director shall approve an extension of the time period for Developer to cure identified deficiencies. The Director's determination of whether good cause for an extension of time exists shall be final and binding. To the extent there are disagreements regarding alleged deficiencies, County and Developer shall meet and confer prior to County pursuing the remedies available to County under this Agreement. If Developer does not complete the Jumper Bridge Project within such time period, County may, in the Director's discretion, pursue the remedies available to County under this Agreement, including but not limited to calling upon the Security provided pursuant to Section 8

and to complete the Jumper Bridge Project in whatever manner the Director shall decide, and such other legal or equitable remedies as may also be available.

(g) Developer shall bear all costs of, and shall prepay any applicable County fees for, any inspections the Director determines to be required.

8. SECURITY

8.1 Required Security. Prior to the Director issuing permits to Developer for any of the Improvements to be constructed under this Agreement, Developer shall provide to County the following forms of security to secure Developer's faithful performance of its obligations under this Agreement:

(a) Two performance bonds issued to County on behalf of Developer by a surety authorized to transact surety business in the State of California. The first bond shall be for the construction of the Roadway Improvements and the Jumper Bridge and shall be in the amount of nine million three hundred thirty seven thousand one hundred seventy six dollars (\$9,337,176), which amount is equal to a good faith estimate by the Construction Engineer of one hundred percent (100%) of the estimated cost at prevailing wage rates of the construction of the Roadway Improvements and the Jumper Bridge ("**Improvement Construction Performance Bond**"). The second bond shall be for the Maintenance and Restoration of the Roadway and the decommissioning of the Jumper Bridge and shall be in the amount of four million three hundred fifty nine thousand two hundred fifty seven dollars (\$4,359,257), which amount is equal to a good faith estimate by the Construction Engineer of one hundred percent (100%) of the estimated cost at prevailing wage rates of Maintenance and Restoration of the Roadway, decommissioning of the Jumper Bridge and repair or replacement, if required as determined by Director, of the Little Panoche Creek Bridge ("**Restoration and Decommissioning Performance Bond**") (these two bonds shall be collectively referred to as the "**Developer's Performance Security**").

(b) Two performance bonds issued to Developer on behalf of the Construction Contractor by a surety authorized to transact surety business in the State of California. The first bond shall be for the construction of the Roadway Improvements and the Jumper Bridge and shall be in the amount of nine million three hundred thirty seven thousand one hundred seventy six dollars (\$9,337,176), which amount is equal to a good faith estimate by the Construction Engineer of one hundred percent (100%) of the estimated cost at prevailing wage rates of the construction of the Roadway Improvements and the Jumper Bridge ("**Construction Contractor's Improvement Construction Performance Bond**"). The second bond shall be for the Maintenance and Restoration of the Roadway and the decommissioning of the Jumper Bridge and shall be in the amount of two million six hundred ninety six thousand eighty dollars (\$2,696,080), which amount is equal to a good faith estimate by the Construction Engineer of one hundred percent (100%) of the estimated cost at prevailing wage rates of Maintenance and Restoration of the Roadway and decommissioning of the Jumper Bridge ("**Construction Contractor's Restoration and Decommissioning Performance Bond**") (these two bonds shall be collectively referred to as the "**Construction Contractor's Performance Bonds**"). The

Construction Contractor's Performance Bonds shall name the Developer and County as co-obligees; and

(c) Two labor and materials payment bonds issued to Developer on behalf of the Construction Contractor by a surety authorized to transact surety business in the State of California. The first bond shall be for the all work, materials and supplies required to complete construction of the Roadway Improvements and the Jumper Bridge and shall be in the amount of nine million three hundred thirty seven thousand one hundred seventy six dollars (\$9,337,176), which amount is equal to a good faith estimate by the Construction Engineer of one hundred percent (100%) of the estimated cost at prevailing wage rates of the construction of the Roadway Improvements and the Jumper Bridge ("**Construction Contractor's Improvement Construction Payment Bond**"). The second bond shall be for the Maintenance and Restoration of the Roadway and the decommissioning of the Jumper Bridge and shall be in the amount of two million six hundred ninety six thousand eighty dollars (\$2,696,080), which amount is equal to a good faith estimate by the Construction Engineer of one hundred percent (100%) of the estimated cost at prevailing wage rates of Maintenance and Restoration of the Roadway and decommissioning of the Jumper Bridge ("**Construction Contractor's Restoration and Decommissioning Payment Bond**") (these two bonds shall be collectively referred to as the "**Construction Contractor's Payment Bonds**"). The Construction Contractor's Payment Bonds shall name the Developer and County as co-obligees.

8.2 Release of Security. No release of the Security shall be made except upon approval of the Director. Within ten (10) County Business Days of the latter of the Director's issuance of the Acknowledgement of the Roadway Improvements and the Acknowledgement of Installation of the Jumper Bridge, the Director shall issue written authorization for the release of the Improvement Construction Performance Bond, the Construction Contractor's Improvement Construction Performance Bond, and the Construction Contractor's Improvement Construction Payment Bond. Within ten (10) County Business Days of the latter of the Director's issuance of the Acknowledgement of Completion of Maintenance and Restoration of Roadway and the Acknowledgement of Completion of the Jumper Bridge Project, the Director shall issue written authorization for the release of the Restoration and Decommissioning Performance Bond, the Construction Contractor's Restoration and Decommissioning Performance Bond, and the Construction Contractor's Restoration and Decommissioning Payment Bond.

9. GUARANTY

9.1 Guaranty Period. Developer shall execute and deliver to Director a Guaranty, in form substantially identical to Exhibit D hereto, that guarantees and warrants that the Roadway Improvements shall be free from faulty or defective materials or deficient workmanship in the construction of the Roadway Improvements (normal wear and tear excluded) for a period of one (1) year commencing on the date of the Acknowledgement of Completion of the Roadway Improvements ("**Guaranty Period**").

9.2 Guaranty repairs and replacements.

(a) If, within the Guaranty Period, Director determines that any part of the Roadway Improvements fail to fulfill any of the requirements of this Agreement, the Roadway Improvement Plans, Developer shall repair, replace or reconstruct any defective or otherwise unsatisfactory parts of the Roadway Improvements without delay and at no cost to County or such other applicable responsible agency. During the Guaranty Period, Director shall notify Developer of any defect or damage to the Roadway Improvements within five (5) County Business Days after the defect or damage becomes known. If Developer fails to complete repairs, replacement, or reconstruction within thirty (30) days of the date of delivery of written notice from Director, the Director may, in his or her discretion, pursue the remedies available to County under this Agreement, and such other legal or equitable remedies as may also be available. Upon a showing of good cause in writing by Developer not less than twenty-five (25) days after receiving Director's written notification of deficiencies, Director shall approve an extension of the time period for Developer to cure identified deficiencies. The Director's determination of whether good cause for an extension of time exists shall be final and binding. If Director determines that public safety requires repair before Developer can be notified, County shall have the option, exercisable in the Director's discretion, at its sole option, to perform the required repair itself. Developer agrees to pay the cost of any repairs County performs pursuant to this Agreement.

(b) The warranties and guarantees set forth in this Agreement are exclusive and in lieu of all other warranties, express or implied, for performance, merchantability, fitness for a particular purpose, non-infringement or otherwise. There are no other warranties, agreements, oral or written, or understanding which extend beyond those set forth in this Agreement with respect to the warranted work, materials and equipment. Developer is not and shall not be held liable for any defect or alleged breach of the warranties given in this Agreement, to the extent such defect or damage is caused by or arises out of:

- (i) Ordinary wear and tear in the operation of the Improvements;
- (ii) Alterations or repairs carried out by persons not authorized by Developer;
- (iii) During the Guaranty Period, any delay in remedying a breach of the warranty due to a *force majeure* event;
- (iv) Damage or defects not caused (1) by Developer or (2) by faulty or defective materials or deficient workmanship in the construction of the Roadway Improvements, attributable to the Construction Contractor or any subcontractor or vendor; or
- (v) Negligent acts or omissions or willful misconduct of County, or any third party excluding the Construction Contractor or any of its subcontractors or vendors.

10. COMPLIANCE WITH LEGAL REQUIREMENTS

Developer shall comply with Legal Requirements in the exercise of its rights and

obligations under this Agreement.

11. HOLD HARMLESS AND INDEMNIFICATION

11.1 Indemnity. Neither County nor any of its elected officials, boards, officers, employees, agents, contractors or their subcontractors, or consultants or their subconsultants shall be liable for any injury to persons or damage or injury to or loss of any property occasioned by reason of the acts, omissions, negligence or willful misconduct of Developer, its officers, agents, employees, contractors or their subcontractors, or consultants or their subconsultants in the performance of Developer's obligations under this Agreement. Developer further agrees to protect, defend, indemnify and hold harmless County, and its elected officials, boards, officers, agents, employees, contractors or their subcontractors, and consultants or their subconsultants from and against any and all claims, demands, causes of action, liability or loss of any sort, including but not limited to attorney fees and litigation expenses to the extent arising out of or in connection with, or alleged to arise out of or in connection with, acts or omissions of Developer, its members, officers, agents, employees, contractors or their subcontractors, or consultants or their subconsultants in the performance of Developer's obligations under this Agreement, including all claims, demands, causes of action, liability or loss to the extent arising out of or in connection with, or alleged to arise out of or in connection with, the design, construction, or use of the Roadway Improvements, Maintenance and Restoration of the Roadway, and the Jumper Bridge Project. Notwithstanding the preceding, Developer shall have no indemnity obligation for special, consequential, or punitive damages or for any injury, damage, loss of property or other liability resulting from the County's gross negligence, willful misconduct, or criminal conduct.

11.2 No Assumption of Liability. County's issuance of Acknowledgement of Completion of the Roadway Improvements, Acknowledgement of Completion of Maintenance and Restoration of the Roadway, Acknowledgement of Installation of the Jumper Bridge, or Acknowledgement of Completion of the Jumper Bridge Project shall not constitute an assumption by County of any responsibility of Developer under Section 3, herein. County's issuance of Acknowledgement of Completion of the Roadway Improvements, Acknowledgement of Completion of Maintenance and Restoration of the Roadway, Acknowledgement of Installation of the Jumper Bridge, or Acknowledgement of Completion of the Jumper Bridge Project, neither relieves the Developer from, nor alters nor diminishes Developer's obligations for (i) complying with all of the Developer's obligations under this Agreement, or (ii) being solely responsible for confirming and correlating all dimensions and quantities, selecting all fabricating processes and techniques of construction of the Improvements in compliance with the all of requirements of this Agreement. County shall not be responsible for the design or construction of any of the Improvements or any part thereof, regardless of any negligent action or inaction taken by County in approving the Improvement Plans, unless the particular Improvement design was specifically required by County over written objection by Developer, indicating that one or more aspects of any particular Improvement design was dangerous or defective and Developer suggested an alternative safe and feasible design, submitted to the Director before approval of the particular Improvement design.

11.3 Survival of Provisions. The provisions of Sections 11.1 and 11.2 herein shall survive the termination of this Agreement for two (2) years after the Expiration Date of this Agreement.

12. INSURANCE

12.1 Insurance Policies. Commencing on the Effective Date and continuing through the Expiration Date of this Agreement, Developer shall maintain and shall cause the Bridge Oversight Engineer, the Construction Engineer, and the Construction Contractor to maintain in full force and effect the following policies of insurance, as specified, except that the Director may approve lower amounts for the Bridge Oversight Engineer. Required limits may be met by a combination of primary and excess policies. Commercial General Liability, Auto and Excess (if applicable) policies shall include naming County and the officers, agents and employees of County individually and collectively, as additional insureds.

(a) Commercial general liability insurance with limits of not less than Five Million Dollars and No Cents (\$5,000,000.00) per occurrence and an annual aggregate of Ten Million Dollars and No Cents (\$10,000,000.00). This policy shall be issued on a per occurrence basis. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage ("occurrence" form CG0001 04143). County may require specific coverage including completed operations, product liability, contractual liability, Explosion-Collapse-Underground, fire legal liability, or any other liability insurance deemed necessary by County because of the nature of the work contemplated to be performed by Developer and the Construction Contractor with respect to the various Improvements that are the subject of this Agreement, and the work, services, and functions to be provided or performed by Developer or the Construction Contractor, and by any consultant and any service vendor in connection therewith.

(b) Commercial automobile liability insurance with limits of not less than Two Million Dollars and No Cents (\$2,000,000.00) per covered event for bodily injury and property damage. Coverage shall be at least as broad as Insurance Services Office Business Auto coverage form number CA 0001 1013 covering Automobile Liability, code 1 "any auto." Coverage shall include owned and non-owned vehicles used in connection with the work, services, and functions to be provided or performed by Developer or its construction contractor(s), or by any consultant and any service vendor, with respect to the various Improvements that are the subject of this Agreement.

(c) Professional liability insurance. Developer shall require its Construction Engineer to obtain and maintain Professional Liability Insurance with limits of not less than Three Million Dollars (\$3,000,000.00) per occurrence, Five Million Dollars (\$5,000,000.00) annual aggregate.

(d) Workers' compensation liability insurance with minimum limits as required by the by the California Labor Code, and employer's liability insurance, with limits of not less than Two Million Dollars and No Cents (\$2,000,000.00) per covered event.

Such commercial general liability insurance and commercial automobile liability insurance shall include, by blanket endorsement to each of the Commercial General Liability, Auto and Excess (if applicable) policies, the County of Fresno, including its boards, officials, officers, agents, and employees, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverages for additional insureds shall apply as primary insurance and any other insurance, self-insurance or coverage program, maintained by County of Fresno, including its boards, officials, officers, agents, and employees, shall be excess only and not contributing with insurance provided under Developer's, and/or its Construction Contractor's, Construction Engineer's, Bridge Oversight Engineer and/or any consultant's and any service vendor's, policies herein. Such insurance coverages required herein shall apply separately to each such named additional insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

12.2 Insurance Requirements. Each policy shall be issued by an insurance carrier authorized by the California Department of Insurance to do business in the State and shall have a Best's Insurance Rating of A, Class VIII or better.

12.3 Certificate. Developer shall file with the Director at or prior to the time of execution of this Agreement by Developer certificates of insurance coverage that must be reasonably satisfactory to the Director. All certificates are to be received and approved by the Director before commencement of work on any Improvements. In the event of cancellation of coverage, Developer shall promptly replace the required coverage so that no lapse in insurance occurs and provide a certificate of insurance of the new coverage to the Director; and Developer's failure to do so within thirty (30) days shall constitute an event of Default hereunder, as more thoroughly provided in Section 10 hereof.

In the event that the Improvements are situated in or affect the area of jurisdiction of a separate municipality or political subdivision of the State of California, the required insurance shall also name the other jurisdiction(s) as additional insured, if requested by the other jurisdiction(s).

13. ASSIGNMENT

Developer shall not assign this Agreement without the prior written consent of County, which consent shall not be unreasonably withheld, provided that (1) any such assignment shall be for all of the Developer's rights and there shall be included a delegation of all of the Developer's obligations of the entire Agreement to a single party, (2) there is not an event of Default by Developer under of this Agreement, and (3) the proposed assignee assumes to the fullest extent all obligations of Developer under this Agreement remaining to be performed, including without limitation all bonding and/or security requirements, pursuant to appropriate instruments in form reasonably acceptable to County, each of which must be executed by the proposed assignee as a prerequisite to County's consideration of such request.

14. DEFAULT, BREACH, AND REMEDIES TO COUNTY

14.1 Default. Default of Developer shall include, but not be limited to:

(a) Developer's failure to complete construction of the Roadway Improvements within the time specified in Section 3 to the satisfaction of the Director; or

(b) Developer's failure to diligently conduct and complete the Maintenance and Restoration of the Roadway according to the requirements and within the time specified in Section 3 to the satisfaction of the Director; or

(c) Developer's failure to complete the Jumper Bridge Project within the time specified in Section 3 to the satisfaction of the Director; or

(d) Developer's failure to timely cure any defect in the Roadway Improvements to the satisfaction of the Director; or

(e) Subject to Section 3.10, Developer's failure to perform substantial construction work on any discrete component of the Roadway Improvements for a period of 30 consecutive days after commencing work on such discrete component and receiving notice from County that interruption in the performance of such work is resulting in adverse impacts on the health, safety or welfare of the County or the surrounding communities or its or their residents; or

(f) Subject to Section 3.10, Developer's failure to timely cure any deficiencies in the Jumper Bridge Project to the satisfaction of the Director within the 30-day period following receipt of notice from County as specified in Section 3 above (or such longer period as is specified therein); or

(g) Subject to Section 3.10, Developer's failure to timely submit plans that are satisfactory to the Director to repair or replace Little Panoche Creek Bridge, or to complete repairs or replacement of Little Panoche Creek Bridge, in a manner consistent with the requirements of Section 3.7 or Section 7.3; or

(h) Any act or omission of Developer that causes a cessation (for a period of 30 consecutive days) or abandonment of the work on any of the Improvements by Developer's construction contractor(s), as determined by the Director; or

(i) Developer's failure to replace any required policy of insurance that has been cancelled with another policy providing for no lapse of coverage, within the 30-day period specified in Section 12 above; or

(j) Developer's failure to perform any other obligation under this Agreement as determined by the Director, which failure to perform is not cured within the time permitted by this Agreement; or

(i) Bankruptcy, reorganization, liquidation, arrangement, insolvency, receivership or conservatorship proceedings, or other proceedings for relief under any

bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Developer, and are not dismissed within thirty (30) days of institution, or there is an assignment by the Developer for the benefit of creditors, or any similar action taken by or against the Developer, or the Developer is insolvent.

14.2 Remedies Cumulative. County reserves all remedies available at law or in equity for breach of Developer's obligations under this Agreement. Without limiting the generality of the foregoing, in addition to the right to compel specific performance of this Agreement, County shall have the right, to call upon or use the appropriate Security to mitigate County's damages in the event of Default by Developer. Provided that County first makes an effort to call upon and exhaust the Security, its right to call upon or use the Security is in addition to any other remedy available to County. The Parties acknowledge that the estimated costs and Security amounts may not reflect the actual cost of construction of the Improvements and, therefore, the amount of County's damages attributable to Developer's default shall be measured by the cost of completing the required Improvements. County may use the sums provided by the Security for completion of the Improvements in accordance with the Improvement Plans. The provisions of this Section 14.2 are subject to the requirement of Sections 5, 6, and 7 of this Agreement that the County and Developer meet and confer regarding alleged deficiencies prior to County pursuing the remedies available to County under this Agreement.

14.3 County Performance at Developer's Expense. In the event that Developer fails to cure any default under this Agreement within forty five (45) days after County delivers written notice of such default to Developer and Developer's surety (or for any default which cannot be reasonably cured within such time period, if, after providing County notice of such extended cure period and receiving County's approval in writing, Developer fails to commence to cure such default within such time period and thereafter fails diligently to pursue such cure to completion), Developer authorizes County to perform the obligations for which Developer is in default and agrees to pay the entire cost of such performance by County. In the event of a default that could result in the imminent endangerment of life, health or safety unless the cure is implemented immediately, the County may perform the obligations, but shall in all events, provide notice to Developer within five (5) County Business Days of performing such emergency cure work.

14.4 Surety Liability and Use of Materials. In the event that County elects to perform the obligations for which Developer is in default, County may take over the work and complete the Improvements by contract or by any other method County deems appropriate, at the sole cost and expense of Developer, and Developer and its surety shall be liable to County for any excess cost or damages to County resulting therefrom, or County may otherwise proceed to use the Security set forth in Section 8. In such event, County, without liability for so doing, may take possession of and use any materials, appliance, plant and other property that are owned by Developer and are located at the Work Site and are necessary to complete the Improvements.

14.5 Developer Payment of County Costs. In the event that Developer fails to perform any obligation under this Agreement, Developer agrees to pay all costs and expenses incurred by County in obtaining full performance of those obligations, including but not limited to fees and charges of architects, engineers, attorneys and other professionals, and costs of suit and reasonable attorneys' fees, provided County submits reasonable documentation of such fees and charges.

14.6 No Waiver. County's failure to take enforcement action with respect to a Default, or to declare a breach, shall not be construed as a waiver of that Default or breach or any subsequent Default or breach by Developer.

15. DEVELOPER TO WARN PUBLIC

Developer shall have and hereby assumes the responsibility to give good and adequate warning to the public of any condition arising from work on any of the Improvements that has the foreseeable potential to create a hazardous condition, and Developer shall take reasonable actions to protect the public from such condition. In addition to the foregoing, the Developer shall comply with the Department's standard road maintenance policies, including its road closure notice requirements. The Director's interpretation of the Department's standard road maintenance policies, including its road closure notice requirements, shall be final and binding on Developer.

16. NOTICES

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

County: County of Fresno
Director of Public Works and Planning
2220 Tulare Street, Sixth Floor
Fresno, CA 93721

Copies of notices to COUNTY shall also be given to:

Fresno County Counsel
Attention: Arthur G. Wille, Senior Deputy County Counsel
2220 Tulare Street, Suite 500
Fresno, CA 93721

County Administrative Officer
Attn: Public Works and Planning Analyst
County of Fresno
Hall of Records
2281 Tulare Street, Room 304
Fresno, CA 93721

Developer: Panoche Valley Solar LLC
c/o Consolidated Edison Development, Inc.
Attn: General Counsel
100 Summit Lake Drive, Suite 410
Valhalla, NY 10595

With a copy to: Morrison & Foerster LLP
Attn: Miles Imwalle
425 Market Street
San Francisco, CA 94105

17. FORCE MAJEURE

Performance by either Party shall not be deemed to be a Default while, or the extent to which, a Party's performance is prevented, hindered, or delayed by fire, flood, earthquake, elements of nature, acts of God, acts of war (whether declared or undeclared), terrorism (whether actual or threatened), riots, strikes, rebellion, revolutions, or acts, omissions, circumstances, or events beyond such Party's reasonable control, regardless of whether foreseen or unforeseen, including acts, omissions, circumstances, or events caused by third parties; provided however, any or all of the foregoing will in no event include acts, omissions, circumstances, or events caused by a third party that is under contract with a Party (or subcontract related to such contract) where and to the extent that the acts, omissions, circumstances, or events caused by the third party could have been avoided by such Party's commercially-reasonable, timely, and diligent management or administration of the third party's performance of its contractual obligations and duties under its contract with such Party.

18. NONDISCRIMINATION

Developer, its agents, employees, contractors and subcontractors shall not discriminate in any way against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin in connection with or related to the performance of this Agreement.

19. GOVERNING LAW AND VENUE

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

20. RELATIONSHIP OF PARTIES

Neither Developer nor any of its members, officers, agents, employees, contractors or their subcontractors, or consultants or their subconsultants shall be deemed to be agents of County in connection with the performance of Developer's obligations under this Agreement.

21. SEVERABILITY

In the event any provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the Parties will use their best efforts to meet and confer to determine how to mutually amend such provisions with valid and enforceable provisions, and the remaining provisions of this Agreement will nevertheless continue in full force and effect without being impaired or invalidated in any way.

22. INTEGRATED AGREEMENT; AMENDMENTS IN WRITING

This Agreement, including Exhibits A through D, attached hereto and incorporated herein by this reference, represents the full and complete understanding of the parties with respect to the subject matter hereof, and all preliminary negotiations and oral or written agreements with respect thereto are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by a written instrument signed by both County and Developer. No waiver of any provision of this Agreement will be valid unless and until it is in writing and signed by the Party making the waiver. Waiver by either Party at any time of a breach or default of this Agreement shall not be deemed a waiver of or consent to a breach or default of the same or any other provision of this Agreement.

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

24. AUTHORITY

Each Party represents and warrants to the other Party that such Party is duly authorized and empowered to execute, enter into, and perform its obligations set forth in this Agreement, and

that the individual signing this Agreement on behalf of such Party has been duly authorized to execute this Agreement on behalf of such Party, and will, by signing this Agreement on such Party's behalf, legally bind such Party to the terms and conditions of this Agreement.

Each Party further represents and warrants to the other Party that no other person or entity is required to give its approval or consent to this Agreement in order for such Party to authorize, enter into, and perform its obligations under this Agreement, or that if such approval or consent to this Agreement is required, that such approval or consent has been obtained.

25. BINDING EFFECT

This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

26. NO THIRD PARTY BENEFICIARIES

Notwithstanding anything else to the contrary herein, the Parties acknowledge and agree that no other person, firm, corporation, or entity shall be deemed an intended third-party beneficiary of this Agreement.

27. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument.

Exhibits:

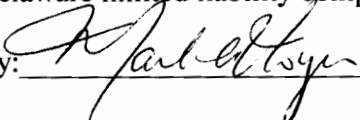
Exhibit A – Map of Roadway
Exhibit B – Mitigation Measures
Exhibit C – Form of Engineer's Certificate
Exhibit D – Form of Guaranty

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Developer and County have caused this Roadway Improvement Agreement to be executed by their respective, duly authorized officers as of the date first written above.

DEVELOPER:

PANOCHE VALLEY SOLAR LLC,
Delaware limited liability company

By: 

Print Name: Mark Noyes

Title: President & Chief Executive Officer

COUNTY:

COUNTY OF FRESNO, a political
subdivision

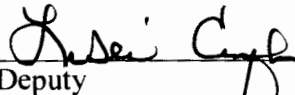
By: 

Print Name: Brian Pacheco


Title: Chairman, Board of Supervisors

ATTEST:

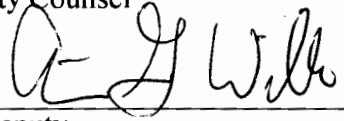
Bernice E. Seidel, Clerk
Board of Supervisors

By: 
Deputy

**REVIEWED AND RECOMMENDED
FOR APPROVAL**

By: 
Steven E. White, Director
Department of Public Works and
Planning

APPROVED AS TO LEGAL FORM
Daniel C. Cederborg
County Counsel

By: 
Deputy

FOR ACCOUNTING USE ONLY

Fund: 0010
Subclass: 11000
Org: 4510
Account: 5800

**APPROVED AS TO ACCOUNTING
FORM**

Oscar J. Garcia CPA
Auditor-Controller/ Treasurer-Tax
Collector

By: 
Deputy

EXHIBIT A

MAP OF ROADWAY



EXHIBIT B

MITIGATION MEASURES

Final Supplemental Environmental Impact Report for the Panoche Valley Solar Facility

MM TR-1.2. Rehabilitate, protect and monitor roadway pavement, bridges and culverts. Prior to the start of construction and decommissioning, the Applicant shall:

- Implement pavement repairs required to achieve a traffic index of 7.0 on Little Panoche Road between Interstate 5 and Panoche Road, and along Panoche Road between Highway 25 and Little Panoche Road if required;
- Rehabilitate roadway striping along Little Panoche Road between Interstate 5 and Panoche Road, and along Panoche Road between Highway 25 and Little Panoche Road if required.
- Repair sections of deteriorated pavement along Little Panoche Road between Interstate 5 and Panoche Road, including the 4.1 through 5.5 mile segment of Little Panoche Road, in accordance with applicable loading standards and to the satisfaction of the County of San Benito Department of Public Works;

During construction the project shall require its contractor to:

- Coordinate with the affected jurisdictions (Caltrans, San Benito and Fresno), and implement appropriate wheel load weight distribution to ensure bridge and culvert crossing are adequately protected.
- Monitor the two culverts along Little Panoche Road that are not located at sufficient depths weekly throughout construction activities for damage to the culverts themselves or dips in the pavement. In the event of any damage that impairs culvert function or presents safety hazards to vehicle travel, project deliveries shall be postponed until the damage is repaired. Any repairs shall be the responsibility of the Applicant.
- In addition to any other local and State requirements relating to oversized loads, the hauling contractor shall place a ¾-inch-thick section of steel plate over the pavement above the culverts prior to hauling the transformers to the project site.
- Conduct ongoing monitoring and evaluation of pavement conditions on Panoche Road between Highway 25 and Little Panoche Road, and on Little Panoche Road between Interstate 5 and Panoche Road at appropriate intervals (as determined by the County of San Benito Department of Public Works) throughout the construction period and undertake roadway repairs as necessary to ensure it safely accommodates the projected construction traffic load.

MM TR-1.3 Repair roadway damage. The Applicant shall restore all public roads, easements, rights of- way and infrastructure (such as signs, utility poles, and cattle guards) within the public road rights-of-way (including Interstate 5 access ramps on Little Panoche Road, Little Panoche Road between Interstate 5 and Panoche Road, Panoche Road between State Route 25 and Little Panoche Road, and State Route 25 between Hollister and Panoche Road) that have been damaged due to project-related construction or decommissioning activities or traffic. Restoration shall be to

roadway conditions that existed prior to commencement of construction or decommissioning and shall be undertaken in a timely manner, in consultation with the County of San Benito and Caltrans and Fresno (if applicable), as appropriate.

At least 30 days prior to construction or decommissioning, the Applicant shall photograph or video record all construction route public roads, easements, and right-of-way segment(s), intersections, and shall provide the County of San Benito, the County of Fresno (if applicable), and Caltrans (if applicable) with a copy of these images.

Within 60 days of completion of construction or decommissioning, the project owner shall meet with the County of San Benito, the County of Fresno (if applicable), and Caltrans (if applicable) to identify sections of public right-of-way to be repaired. At that time, the project owner shall establish a schedule to complete the repairs and to receive approval for the action(s). Following completion of any public right-of-way repairs, the project owner shall provide a letter signed by the County of San Benito, the County of Fresno, and Caltrans stating their satisfaction with the repairs.

EXHIBIT C

**Engineer of Record's Certificate, including License to Use
[Roadway Plans/Jumper Bridge Project Plans] *[as applicable]* for
Infrastructure Improvement, Maintenance,
Protection, And Repair Agreement
(County of Fresno – Little Panoche Road)**

**To: County of Fresno, including its Board of Supervisors
Attn: Director of Public Works and Planning
Address: 2220 Tulare Street, Eighth Floor
Fresno, CA 93721**

As required by that certain Infrastructure Improvement, Maintenance, Protection, and Repair Agreement (“**Agreement**”) entered into on _____, _____, by and between the County of Fresno, a political subdivision of the State of California (“**County**”) and Panoche Valley Solar LLC, a Delaware Limited Liability Company (“**Developer**”) with respect to the [Roadway Improvements/Jumper Bridge Project] *[as applicable]*, the following certification, including conditional license to use work product, is given to the County with respect to the [Roadway Improvement Plans (“**Roadway Plans**”)/Jumper Bridge Project Plans] *[as applicable]* as of the date set forth below by [*insert Name of Engineering Firm*], a [*insert Name of State*] corporation.

All capitalized terms in this certificate, including transfer of work product, have the meaning given to them in the Agreement, unless otherwise defined in this certificate, including transfer of work product.

Certification

I hereby certify on behalf of [Burns & McDonnell Engineering Company, Inc. (Burns & McDonnell)] the following to the best of my personal knowledge, based upon my review of the [Roadway Plans/Jumper Bridge Project Plans] *[as applicable]* that have been authorized under the Agreement, including design calculations supporting the [Roadway Plans/Jumper Bridge Project Plans] *[as applicable]*, and the structural engineering drawings of the [Roadway Plans/Jumper Bridge Project Plans] *[as applicable]*:

1. Burns & McDonnell has been engaged by Developer, and has served, as engineer of record for the design of the [Roadway Improvements/Jumper Bridge Project] *[as applicable]* (“**Engineer of Record**”).

2. The person executing this certificate:

(a) is, and at all relevant times herein has been, a California-licensed professional civil engineer, and such licensure has not been suspended or revoked by the State of California during all relevant times herein;

(b) is authorized by Burns & McDonnell to execute this certificate, including the Conditional License to Use Work Product, below, to the County;

(e) received a true and correct copy of the execution-ready form of the Agreement.

3. Clark Brothers, Inc. of Dos Palos, California, is the construction contractor for the [Roadway Improvements/Jumper Bridge Project] *[as applicable]*.

4. A true and correct copy of the Engineer of Record's design calculations supporting the [Roadway Improvements/Jumper Bridge Project] *[as applicable]* are provided in digital pdf. format and AutoCAD format with this certification.

Conditional License to Use Work Product

I hereby agree on behalf of Burns & McDonnell to the following a limited, non-exclusive, royalty-free and perpetual license to use work product of Burns & McDonnell by the County. This license is a conditional license that shall become effective if, and only if, there is an event of default, as defined, by Developer under that certain Infrastructure Improvement, Maintenance, Protection, And Repair Agreement, by and between the County of Fresno and Panoche Valley Solar, LLC, dated *[insert date]* and the County exercises its right to carry out the [Roadway Improvements/Jumper Bridge Project]:

The [Roadway Plans/Jumper Bridge Project Plans] *[as applicable]*, including design calculations supporting the [Roadway Plans/Jumper Bridge Project Plans] *[as applicable]*, and the structural engineering drawings of the [Roadway Plans/Jumper Bridge Project Plans] *[as applicable]* are collectively the **"Engineer's Work Product."** The Engineer's Work Product, or any applicable portions thereof, includes all drawings, specifications, and other documents and electronic data, including such documents furnished by the Engineer to the Developer.

Upon execution of this License to Use Work Product, the Engineer grants to the County a nonexclusive license to use the Engineer's Work Product solely and exclusively for purposes of constructing, using and maintaining the [Roadway Improvement Project/Jumper Bridge Project] *[as applicable]*, provided that the County substantially performs its obligations under this Agreement. The license granted under this section permits the County to authorize the County and County's consultants and separate contractors, to reproduce applicable portions of the Work Product solely and exclusively for use in performing services or construction for the [Roadway Improvement Project/Jumper Bridge Project] *[as applicable]*.

The County shall not use the Work Product for future additions or alterations to these projects or for other projects, unless the County obtains the prior written agreement of the Engineer and the Engineer's consultants. Such agreement may require appropriate waivers, indemnity, assurances and compensation.

6. This certificate, including transfer of work product, is effective as of its date of issuance, below, and all of its provisions shall survive the termination of the Agreement.

Signed _____

Title _____

Registration No. _____

[Insert Name of Engineering Firm] _____

Date: _____

Affix original stamp of registration, registration number, and expiration thereof.

Attach true and correct copy of the Engineer of Record's design calculations supporting the Roadway Plans

EXHIBIT D

GUARANTY

To the Owner: County of Fresno

Panoche Valley Solar, LLC ("Developer") guarantees and warrants that the Roadway Improvements, as that term is defined in that certain Infrastructure Improvement, Maintenance, Protection, and Repair Agreement by and between the County of Fresno and Panoche Valley Solar, LLC, dated _____ ("Agreement"), shall be free from faulty or defective materials or deficient workmanship in the construction of the Roadway Improvements (normal wear and tear excluded) for a period of one (1) year commencing on the date that the County issues the Acknowledgement of Completion of the Roadway Improvements ("Guaranty Period").

If, within the Guaranty Period, the Director of the Fresno Department of Public Works and Planning, or his or her designee ("Director"), determines that any part of the Roadway Improvements fail to fulfill any of the requirements of the Agreement or the Roadway Improvement Plans (as such term is defined in the Agreement), Developer agrees to repair, replace or reconstruct any defective or otherwise unsatisfactory parts of the Roadway Improvements, as such term is defined in the Agreement, without delay and at no cost to County or such other applicable responsible agency. During the Guaranty Period, Director shall notify Developer of any defect or damage to the Roadway Improvements within five (5) County Business Days after the defect or damage becomes known. If Developer fails to complete repairs, replacement, or reconstruction within thirty (30) days of the date of delivery of written notice from Director, the Director may, in his or her discretion, pursue the remedies available to County under the Agreement, and such other legal or equitable remedies as may also be available. Upon a showing of good cause in writing by Developer not less than twenty-five (25) days after receiving Director's written notification of deficiencies, Director shall approve an extension of the time period for Developer to cure identified deficiencies. The Director's determination of whether good cause for an extension of time exists shall be final and binding. If Director determines that public safety requires repair before Developer can be notified, County shall have the option, exercisable in the Director's discretion, at its sole option, to perform the required repair itself, in which case Developer agrees to pay the cost of any repairs County performs.

The warranties and guarantees set forth in this Guaranty are exclusive and in lieu of all other warranties, express or implied, for performance, merchantability, fitness for a particular purpose, non-infringement or otherwise. There are no other warranties, agreements, oral or written, or understanding which extend beyond those set forth in this Guaranty with respect to the warranted work, materials and equipment. Developer is not and shall not be held liable for any defect or alleged breach of the warranties given in this Guaranty, to the extent such defect or damage is caused by or arises out of:

- i. Ordinary wear and tear in the operation of the Improvements;
- ii. Alterations or repairs carried out by persons not authorized by Developer;

- iii. During the Guaranty Period, any delay in remedying a breach of the warranty due to a *force majeure* event (as defined in Section 17 of the Agreement);
- iv. Damage or defects not caused by Developer or by faulty or defective materials or deficient workmanship in the construction of the Road Improvements, attributable to the Construction Contractor (as defined in the Agreement) or any subcontractor or vendor; or
- v. Negligent acts or omissions or willful misconduct of County, or any third party excluding the Construction Contractor or any of its subcontractors or vendors.

PANOCHE VALLEY SOLAR LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Title: _____