

PROJECT REPORT

TO: **PLANNING COMMISSION**

AGENDA DATE: March 12, 2025

FROM: **PLANNING & DEVELOPMENT SERVICES DEPT.** AGENDA TIME 9:00 PM/No.3

Time Extension #24-0004 Amendment to
PROJECT TYPE: the Wistaria Ranch Solar Development Agreement SUPERVISOR DIST # 2

LOCATION: approx. 5 miles west of Calexico along Highway 98 APN: 052-180-045, et al

Calexico, CA 92231 PARCEL SIZE: 1,685 acres +/-

GENERAL PLAN (existing) Agriculture GENERAL PLAN (proposed) N/A

ZONE (existing) A-2 (Medium Agriculture) & A-3 (Heavy Agriculture) ZONE (proposed) N/A

GENERAL PLAN FINDINGS CONSISTENT INCONSISTENT MAY BE/FINDINGS

PLANNING COMMISSION DECISION: HEARING DATE: 03/12/2025

APPROVED DENIED OTHER

PLANNING DIRECTORS DECISION: HEARING DATE: _____

APPROVED DENIED OTHER

ENVIROMENTAL EVALUATION COMMITTEE DECISION: HEARING DATE: _____

INITIAL STUDY: EIR

NEGATIVE DECLARATION MITIGATED NEG. DECLARATION EIR

DEPARTMENTAL REPORTS / APPROVALS:

PUBLIC WORKS	<input type="checkbox"/>	NONE	<input type="checkbox"/>	ATTACHED
AG / APCD	<input type="checkbox"/>	NONE	<input type="checkbox"/>	ATTACHED
E.H.S.	<input type="checkbox"/>	NONE	<input type="checkbox"/>	ATTACHED
FIRE / OES	<input type="checkbox"/>	NONE	<input type="checkbox"/>	ATTACHED
OTHER				

REQUESTED ACTION:

It is recommended that the Planning Commission conduct a public hearing to hear all the opponents and proponents of the proposed project. Staff would then recommend that the Planning Commission make a recommendation to the Board of Supervisors to approve of the Wisteria Ranch Solar, LLC Development Agreement (DA) time extension and amendment by taking the following actions:

1. Make the Findings that the Final EIR (SCH #2013091084), for the Wisteria Ranch Solar project was certified by the Board of Supervisors on December 30, 2014, and no further environmental documentation is necessary for the Time Extension and Amendment to the Imperial County Development Agreement concerning the Wisteria Ranch Solar project.
2. Approve the Resolution and Findings for the DA Amendment and Time Extension to the Imperial County Development Agreement concerning Wisteria Ranch Solar, LLC, as amended.

STAFF REPORT
PLANNING COMMISSION
March 12, 2025

**Time Extension #24-0004 for an Amendment to the
CED Wistaria Solar Development Agreement
(formally known as Wistaria Solar Ranch)**

Applicant: CED Wistaria Solar 2, LLC

Project Location:

The previously entitled Wistaria Solar Ranch, is a photovoltaic (PV) energy generation project on portions of approximately 2,661.11 acres. The solar field site parcels are approximately six miles southwest of the City of El Centro, California and five miles directly west of Calexico, California. The Project area is generally bounded by Wahl Road on the north, Brockman and Rockwood Roads on the west, the U.S./Mexico border on the south, and Ferrell and Corda Roads on the east. The geographic center of the solar field site parcels and Electric Collector Line Corridor roughly corresponds with 32° 41' 48" North and 115° 37' 00" West, at an elevation of 13 feet below sea level. The Gen-Tie component of the Project generally starts to the east of Rockwood Road, north of Anza Road and extends due west to Pulliam Road then aligns south.

Project Summary:

The previously entitled Wistaria Solar Ranch is the construction, operation and reclamation of up to sixteen (16) separate solar energy projects using conventional PV modules (either crystalline or thin-film) or concentrated photovoltaic (CPV) modules. The system operates only when the sun is shining during daylight hours. The ultimate energy output is dependent on several variables, including off-take arrangements and the evolving efficiency of PV panels. As a result, the project could generate 250 MW.

On November 16, 2023, the Planning & Development Services Department received notification from the applicant, CED Wistaria Solar 2, LLC, requesting that the County of Imperial amend the current Development Agreement approved by the Board of Supervisors on December 30, 2014. The applicant requested extending the time to commence development of the project for an additional ten (10) years. The newly proposed amendment will update performance milestones, time limits and allow for the development of the eleven (11) remaining solar projects, i.e. Conditional Use Permits.

Development Agreement:

The current project is the subject of this Agreement as described in the Final EIR certified by the Board of Supervisors. As five (5) solar projects have been built, the project currently consists of 11 solar projects, Conditional Use Permits #13-0038, through #13-0046, 13-0048, and 13-0049; and 11 Variances #13-0004, through 13-0012, 13-0014 and 13-0015, and related improvements as more fully described in section 5 of this Agreement.

Environmental Analysis:

The Final Wistaria Ranch Solar Energy Project EIR (SCH #2013091084), a Mitigation, Monitoring and Reporting Program, and Candidate CEQA Findings has been prepared and approved by the Board of Supervisors on December 30, 2014, in accordance with the requirements of the California Environmental Quality Act, the State CEQA Guidelines, and the County's Rules to Implement CEQA, as amended.

STAFF RECOMENDATION:

Staff recommend the Planning Commission and hold a public hearing and hear all proponents and opponents of the proposed project; staff would then recommend that the Planning Commission consider the following action:

1. Find that the Final EIR (SCH #2013091084) for the CED Wistaria Solar Project was certified by the Board of Supervisors on December 30, 2014, and that no further environmental documentation is necessary for this time extension and amendments to the Imperial County Development Agreement concerning CED Wistaria Solar.
2. Approved Resolution recommending that the Board of Supervisors adopt Ordinance _____ for the proposed amendments including time extension to the Imperial County Development Agreement concerning CED Wistaria Solar project.

REPAIRED BY:

David Black
Planning & Development Services

For [Signature]

REVIEWED BY:

Michael Abraham, AICP, Assistant Director
Planning & Development Services

[Signature]

APPROVED BY:

Jim Minnick, Director
Planning & Development Services

For [Signature]

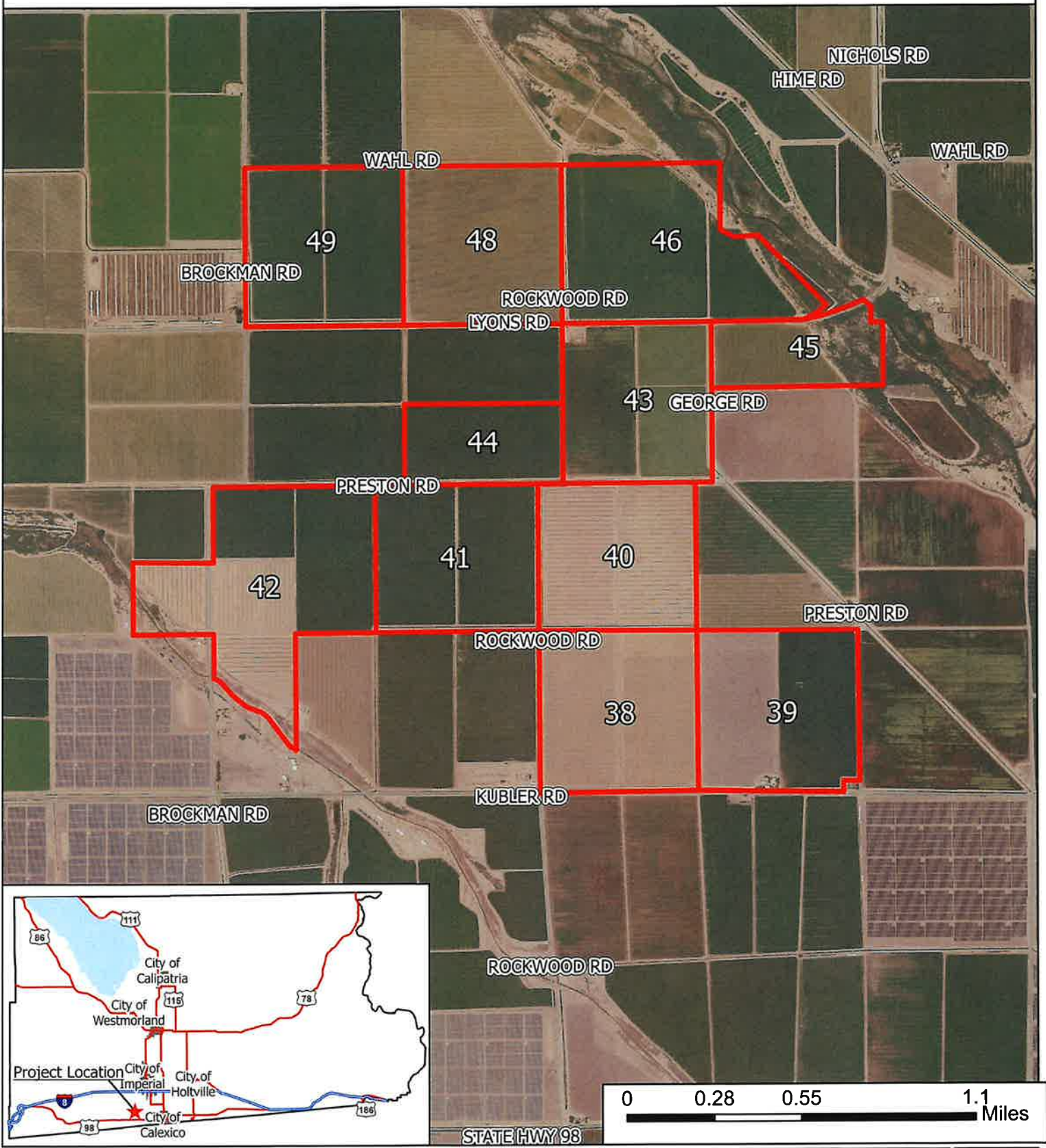
ATTACHMENTS:

- A. Location Map
- B. Resolution DA
- C. Development Agreement draft
- D. Development Agreement Extension request
- E. CEO's letter

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Attachment A
Location Map

PROJECT LOCATION MAP



**WISTARIA 2 DA
TIME EXTENSION 24-0004
APN 052-180-045-000 ET AL.**

— Centerline
 Wisteria 2



Attachment B
DA Resolution

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF IMPERIAL, CALIFORNIA, RECOMMENDATION FOR APPROVAL TO THE BOARD OF SUPERVISOR FOR THE TIME EXTENSION #24-0004 AMENDING THE DEVELOPMENT AGREEMENT FOR THE CED WISTARIA SOLAR PROJECT.

WHEREAS, a Final Project EIR SCH #2013091084, a Mitigation Monitoring and Reporting Program and Candidate CEQA Findings have been prepared in accordance with the requirements of the California Environmental Quality Act, the State CEQA Guidelines, and the County's Rules to Implement CEQA as amended; and

WHEREAS, the Planning Commission of the County of Imperial has been delegated with the responsibility of making recommendations to the Imperial County Board of Supervisors for approval and certification; and

WHEREAS, public notice of said application has been given, and the Planning Commission has considered evidence presented by the Imperial County Planning & Development Services Department and other interested parties at a public hearing held with respect to this item on March 12, 2025.

NOW THEREFORE, the Planning Commission of the County of Imperial DOES **HEREBY RESOLVE** as follows:

SECTION 1. The Planning Commission has reviewed the time extension and amendments for the Development Agreement for the CED Wistaria Solar Project prior to making a decision to recommend that the Board of Supervisors to approve the proposed Development Agreement as amended; The Planning Commission finds and determines that the Development Agreement is adequate and prepared in accordance with the requirements of the Imperial County General Plan and Land Use Ordinance and the California Environmental Quality Act (CEQA) which analyzes environmental effects, based upon the following findings and determinations.

SECTION 2. That in accordance with State Planning and Zoning law and the County of Imperial the following findings for the approval of the Development Agreement for the CED Wistaria Solar Project have been made as follows:

A. Is project consistent with the objectives, polices, general land uses and programs specified in the general plan and any applicable specific plan?

The design and improvements and amendments proposed are consistent overall with the Imperial County General Plan. The proposed solar development together with the provision for its design and improvements is consistent with the policies, goals, objectives, general land uses, and programs specified in the General Plan. The CED Wistaria Solar Project EIR includes a discussion of the proposed

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CED WISTARIA SOLAR DEVELOPMENT AGREEMENT**

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project's consistency with the General Plan under the discussion and analysis of Impact 4.2.1. C, which concludes that the proposed project would not conflict overall with the policies of the County's General Plan. The General Plan designates the subject site as "Agriculture." Sections 90508.02 & 90509.02 of the County Land Use Ordinance identify the permitted and conditional uses within the A-2 & A-3 zoning designations. Uses identified as conditionally permitted require a Conditional Use Permit (CUP), which is subject to the discretionary approval of the County Board of Supervisors (Board) per a recommendation by the County Planning Commission. The projects include several uses identified as conditionally permitted within the A-2 & A-3 zones.

The current development that is the subject of this Agreement consists of the project as described in the Final EIR certified by the Board of Supervisors. As five (5) solar projects have been built, the project currently consists of 11 solar projects, Conditional Use Permits #13-0038, through 13-0046, 13-0048, and 13-0049; and 11 Variances #13-0004, through 13-0012, 13-0014 and 13-0015, and related improvements as more fully described in section 5 of this Agreement ("Project").

The Planning Commission has also examined the relevant, applicable portions of the Imperial County General Plan's Land Use Element and the Geothermal/Alternative Energy & Transmission Element and has determined that the Land Use Element's statement that "geothermal, hydroelectric, wind and solar facilities may be regulated differently than other types of power plants by implementing zoning" demonstrates that the proper regulating process for solar facilities is the County's Zoning Ordinance. General Plan, Land Use. Elem., p. 46. The General Plan provides that the evaluation and approval of non-agricultural uses on lands designated agriculture will occur through the implementation of zoning and the conditional use permit (CUP) review process. Further, the Land Use Compatibility Matrix in the ICGP provides that industrial uses are permissible on lands zones A-2 & A-3 with a CUP. General Plan, Land Use Elem., Table 4. C.

Additionally, the Geothermal/Alternative Energy Element's conclusion that "with the gradual construction of geothermal/alternative energy plants, overall agricultural production levels should not be adversely affected" through careful, site-specific planning and mitigation reflects the County's intent to allow alternative energy plants such as solar facilities on agriculturally designated lands subject to a case-by-case process as allowed under the zoning code. Therefore, pursuant to Land Use Ordinance, Section 90508.02, solar is permitted with approval of a Conditional Use Permit for "Solar Power Plants."

Moreover, the Agricultural Element and Land Use Element contains no express prohibition of non-agricultural uses on land designated within the Agricultural category. Rather, the Agricultural Element specifically allows non-agricultural

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development on land within the Agricultural Category. According to the Land Use Element, Agriculture is the principal and dominant use, but it expressly allows non-agricultural uses on agricultural land and places an appropriate burden on those proposing a non-agricultural use to demonstrate that (1) it “does not conflict with agricultural operations and will not result in the premature elimination of such agricultural operations” and (2) it meets the requirement that “no use should be permitted which would have a significant adverse effect on agricultural production.” (General Plan Land Use Elem. IV.C.1.)

The County finds that the evidence in the record demonstrates that the Project does not conflict with any existing agricultural operations and will not result in the premature elimination of agricultural operations. While the Project will cause the project site to be unavailable for agricultural production during construction, operation, maintenance, and decommissioning of the Project, this temporary loss is mitigated to less than significant by the mitigation measures identified in the EIR, which ensure that opportunities for active agriculture production in the County will continue to be available, supported, and promoted. The affected agricultural land will remain within the Agricultural land use category. Further, the Project applicant will be required to submit to Imperial County a site-specific reclamation plan capable of restoring the site back to current agricultural conditions, which will further ensure availability of the land for future agricultural production.

The County further finds that the Project does not have a significant adverse effect on agricultural production. “Significant adverse effect on agricultural production” means a significant unmitigated impact, as defined under CEQA, to agricultural resources resulting from the permanent elimination of agricultural uses or resulting from removal agricultural land from the Agricultural land use category. To the extent the Project will prevent the use of the Project sites from being used for agricultural production during construction, operations, and decommissioning activities, the EIR has identified mitigation measures which will limit the Project’s effect on agricultural production. These measures include options to:

- Acquire an agricultural conservation easement on a 1:1 (non-prime farmland) or 2:1 (prime farmland) ratio of impacted acres, thus ensuring the availability of an equal amount of agricultural land for production;
- Pay of an in-lieu mitigation fee to be used by the County’s Agriculture Commissioner to promote active agriculture production;
- Enter into a voluntary Development Agreement or Public Benefit Agreement that will include, among other things, payment of a fee no less than the in lieu mitigation fee contemplated above.

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Thus, while the Project will cause the Project sites to be unavailable for agricultural production during construction, operation, maintenance, and decommissioning of the Project, this temporary loss is mitigated to less than significant by the mitigation measures, which ensure that opportunities for active agriculture production in the County will continue be available, supported, and promoted. Further, County policy requires preparation and implementation of an agriculture reclamation plan that will return the site to agriculture production capability at the end of the proposed operational life.

Furthermore, the purpose of the project is for the construction of a PV solar facility. Pursuant to Title 9, Division 5, Chapter 8, "Solar energy electrical generator," "Electrical power generating plant," "Major facilities relating to the generation and transmission of electrical energy," and "Resource extraction and energy development," are uses that are permitted in the A-2, zones subject to approval of a CUP from the County. The Project site is zoned A-2. The purpose of these zones is to designate areas that are suitable for agriculture uses, as well as areas that support other compatible uses consistent with the identified permitting requirements. Solar energy facilities are permitted with a conditional use permit in A-2 zone (Imperial County Code § 90508.02). Therefore, the proposed use is consistent with the purpose of the zone or sub-zone within which the use will be located.

The Project complies with the minimum requirements of this Title by, among other things, obtaining a CUP, complying with the California Environmental Quality Act, and participating in the public review and hearing process. Development standards have been established for the Project pursuant to these processes and will be enforced via imposition and enforcement of the Mitigation Monitoring and Reporting Program recommended for approval by separate Resolution, as well as the conditions of approval imposed on this CUP. The Conditions of Approval will further ensure that the project complies with all applicable regulations of the County of Imperial and the State of California. Therefore, the proposed project will meet the minimum requirements of the Land Use Ordinance, Section 90203.00.

B. Is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is or will be located.

The purpose of the project is for the construction of a PV solar facility. Pursuant to Title 9, Division 5, Chapter 8, "Solar energy electrical generator," "Electrical power generating plant," "Major facilities relating to the generation and transmission of electrical energy," and "Resource extraction and energy

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development,” are uses that are permitted in the A-2, zones subject to approval of a CUP from the County. The Project site is zoned A-2. The purpose of these zones is to designate areas that are suitable for agriculture uses, as well as areas that support other compatible uses consistent with the identified permitting requirements. Solar energy facilities are permitted with a conditional use permit in A-2 zone (Imperial County Code § 90508.02).

Furthermore, the proposed use meets the minimum requirements of this Title applicable to the use and complies with all applicable laws, ordinances and regulations of the County of Imperial and the State of California. (Imperial County Code § 90203.09.D). The Project complies with the minimum requirements of this Title by, among other things, obtaining a CUP, complying with the California Environmental Quality Act, and participating in the public review and hearing process. Development standards have been established for the Project pursuant to these processes and will be enforced via imposition and enforcement of the Mitigation Monitoring and Reporting Program recommended for approval by separate Resolution, as well as the conditions of approval imposed on this CUP. The Conditions of Approval will ensure that the project complies with all applicable regulations of the County of Imperial and the State of California. Therefore, the proposed project will meet the minimum requirements of the Land Use Ordinance, Section 90203.00.

Therefore, the proposed use is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is located

C. Is in conformity with and will promote public convenience, general welfare and good land use practice.

The proposed project is also consistent with the County’s goal of becoming a major source of renewable energy for California and fulfill its mission to help California meet its statutory and regulatory goal of increasing renewable power generation, including greenhouse gas reduction goals of Assembly Bill (AB) 832 (California Global Warming Solutions Act of 2006). Imperial County is a major source of renewable energy for the State of California. One of the purposes of the Imperial Valley Renewable Energy Development Program is to “maximize development of all renewable energy resources.” An objective of the Project is “to help California meet its statutory and regulatory goal of increasing renewable power generation, including greenhouse gas reduction goals of Assembly Bill (AB) 832 (California Global Warming Solutions Act of 2006).” Pursuant to SB 2X, California utilities have been mandated to obtain 33% of their energy from renewable sources (wind, solar, geothermal, biofuels, etc.). These renewable energy policies and goals are directly related to statewide population growth.

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The proposed use provides a clear long term economic benefit to the County. Solar energy projects provide economic growth to the region and economic benefit to the County and Goal 2 of the Land Use Element states that the County should “[d]iversify employment and economic opportunities in the County while preserving agricultural activity”. Goal 3, Objective 3.2 of the Land Use Element recognizes the need to “[p]reserve agricultural and natural resources while promoting diverse economic growth through sound land use planning.” As demonstrated by the Fiscal, Economic, and Employment Impacts Analyses done for the Project, the Project will create jobs and other economic opportunities in the County at a time of high County unemployment.

D. Will not be detrimental to the health, safety and general welfare;

The PV solar energy facilities are located in a largely undeveloped and unincorporated portion of south-southwest Imperial County. Land surrounding the solar farm complex site consists of agricultural fields with a checkerboard of private land. The facilities are not located near any large residential areas. Noise associated with solar panel operation would also meet the County’s noise ordinance requirements at the projects’ property lines. The Environmental Impact Report prepared for the Project analyzed the Project’s potential effects on the health, safety, and welfare of the public and property and found that, with mitigation, the Project has less than significant effects in all resource’s areas. The Project also prepared Fiscal, Economic, and Employment Impacts Analyses for the Project and the County finds that the Project will benefit the overall economic diversity and strength of the County, thus promoting the welfare of the County’s citizens. Finally, the Project applicant has agreed to conditions of approval that support and promote the protection of the health, safety, and welfare of the County’s citizens and property, and ensures that the County will not be negatively impacted environmentally or fiscally.

The proposed project will be subject to the Conditional Use Permit and current Federal, State and Local regulations. State Planning and Zoning Law (Cal. Govt. Code §§ 65000-66035) establishes minimum statewide standards for the regulation of local land use through planning and zoning. The County regulates local land use via Title 9 of the Imperial County Code. As found above, the proposed project is conditioned to be consistent with Imperial County, Title 9, Land Use Ordinance and CEQA mitigation measures and therefore complies with both State and local laws and ordinance.

Pursuant to CEQA, the County has prepared an EIR for the Project, which analyzes the Project’s compliance and consistency with other federal, state, and local laws and ordinances regulating the environment. Substantial evidence supports the conclusions in the EIR that the Project complies with said environmental laws. The County is aware of no other laws or ordinances that

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might be implicated by the Project, and thus the finds that the proposed use does not violate any other law or ordinance.

E. Will not adversely affect the orderly development of property or the preservation of property values.

As outlined above, the Project is both consistent with the relevant provisions of the General Plan and meets or exceeds the minimum requirements governing land use in Imperial County. The Project, despite causing a temporary unavailability of the subject property for agricultural use during construction, operation, maintenance, and decommissioning of the Project, would restore and improve some of the infrastructure on the property including the main access and some of the existing ground water wells, which have, in some cases, become inoperable. Such occupation of and improvements to the property would revive its outward appearance and likely assist in stabilizing if not improving the values of surrounding properties.

Approval of the Project, along with construction and operation and maintenance of the Project will provide the County of Imperial with increased property tax revenue as well as other secondary economic benefits associated with the need to have a steady workforce and resource supply in the County of Imperial during both construction and operation of the Project, which may result in occupation of nearby residences by the long-term workforce responsible for operating and maintaining the Project.

F. Will provide significant public benefits.

As noted above, the proposed project is consistent with the County's goal of becoming a major source of renewable energy for California and fulfilling its mission to help California meet its statutory and regulatory goal of increasing renewable power generation, including greenhouse gas reduction goals of Assembly Bill (AB) 832 (California Global Warming Solutions Act of 2006). Imperial County is a major source of renewable energy for the State of California. One of the purposes of the Imperial Valley Renewable Energy Development Program is to "maximize development of all renewable energy resources." An objective of the Project is "to help California meet its statutory and regulatory goal of increasing renewable power generation, including greenhouse gas reduction goals of Assembly Bill (AB) 832 (California Global Warming Solutions Act of 2006)." Pursuant to SB 2X, California utilities have been mandated to obtain 33% of their energy from renewable sources (wind, solar, geothermal, biofuels, etc.). These renewable energy policies and goals are directly related to statewide population growth.

The proposed use provides a clear long term economic benefit to the County. Solar energy projects provide economic growth to the region and economic

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benefit to the County and Goal 2 of the Land Use Element states that the County should “[d]iversify employment and economic opportunities in the County while preserving agricultural activity”. Goal 3, Objective 3.2 of the Land Use Element recognizes the need to “[p]reserve agricultural and natural resources while promoting diverse economic growth through sound land use planning.” As demonstrated by the Fiscal, Economic, and Employment Impacts Analyses done for the Project, the Project will create jobs and other economic opportunities in the County at a time of high County unemployment.

NOW, THEREFORE, based on the above findings, the Planning Commission of the County of Imperial **DOES HEREBY RECOMMEND** that the Board of Supervisors approve the proposed Amendments on the Development Agreement for the CED Wistaria Solar Project (“Project”).

Rudy Schaffner, Chairperson
Imperial County Planning Commission

I hereby certify that the preceding resolution was taken by the Planning Commission at a meeting conducted on **March 12, 2025**, by the following vote:

AYES

NOES

ABSENT

ATTEST:

Jim Minnick, Director of Planning & Development Services
Secretary of the Planning Commission

Attachment C
DA Extension Draft

Recording requested by, and
when recorded return to:

County of Imperial
County Executive Office
940 W. Main Street, Suite 208
El Centro, CA 92243

**Imperial County Development Agreement
Concerning Wistaria Ranch Solar Energy Center**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the **County of Imperial**, a political subdivision of the State of California, (“County”) and **RWE Clean Energy Services, LLC**, a Delaware limited liability company licensed to do business in the state of California (“Developer”) (individually, “Party;” collectively, “Parties”) with respect to the development of real property in the County, known as the Wistaria Ranch Solar Energy Center (“Project”).

1. **AUTHORIZATION.** California Government Code Sections 65864 through 65869.5 and Title 9, Division 23 of the County of Imperial Codified Ordinances (Sections 92301 – 92309) authorize the County to enter into binding development agreements with persons having legal or equitable interests in real property for the development of the property in order to establish certainty in the development process.

2. **PROPERTY AND PROJECT DESCRIPTION.**

2.1. **Property Description.** The real property which is the subject of this Agreement consists of consists of individual parcels totaling 1,832 acres within Wistaria Ranch Solar Energy Center Conditional Use Permits (CUPs) 13-0038, 13-0039, 13-0040, 13-0041, 13-0042, 13-0043, 13-0044, 13-0045, 13-0046, 13-0048, and 13-0049, APN 052-180-145-000, 052-180-034-000, 052-180-054-000, 052-180-015-000, 052-180-012-000, 052-180-011-000, 052-170-014-000, 052-180-002-000, 052-180-001-000, 052-440-009-000, 052-440-006-000, 052-350-020-000, 052-350-001-000, 052-350-002-000, 052-350-003-000, 052-350-004-000, 052-440-005-000, 052-440-003-000, and 052-440-004-000. This is an area south of Interstate 8, east of Pulliam Road, and north of the All American Canal in southwestern unincorporated Imperial County, generally bound by Wahl Road on the north, Brockman and Rockwood Roads on the west, and the U.S./Mexico border on the south, and Ferrell and Corda Roads on the east and is more particularly described in **Exhibit “A”** attached hereto (“Property”).

Project Description. The development that is the subject of this Agreement consists of the project as described in the Final EIR certified by the Board of Supervisors for the Project. Generally, the project consists of 11 Conditional Use Permits (CUPs) 13-0038, 13-0039, 13-0040, 13-0041, 13-0042, 13-0043, 13-0044,

13-0045, 13-0046, 13-0048, and 13-0049 and 11 Variances and related improvements as more fully described in section 5 of this Agreement (“Project”).

3. **LEGAL OR EQUITABLE INTEREST IN PROPERTY.** Developer is the holder of options to lease or purchase the Property from the legal owners and has the consent of the legal owners to enter into this Development Agreement.

4. **APPROVALS.**

4.1. This Agreement was approved by Ordinance No. _____ (“DA Ordinance”), adopted on _____, 2024, and shall be effective on the date the DA Ordinance becomes effective (“Effective Date”).

4.2. As of the Effective Date, this Agreement has been given all required discretionary approvals from the following County entities:

4.2.1. Planning Commission;

4.2.2. Board of Supervisors.

4.3. County and Developer agree that the Planning Commission and Board of Supervisors provided their recommendations and discretionary approvals, as applicable (Planning Commission recommendation and Board of Supervisors approval) for the Project and received all public testimony thereon at public hearings properly noticed as provided in Government Code Sections 65867, 65090, and 65091, and County of Imperial Codified Ordinances Section 92303, in addition to any other notice required by law for other actions considered concurrently with the Agreement.

4.4. County and Developer agree that all environmental impacts associated with the development of the Project as provided under this Agreement have been analyzed and adequately addressed in the FEIR and Addendum thereto in accordance with the California Environmental Quality Act (“CEQA”), and that the adoption of this Agreement will not result in any new or different significant environmental effect, or substantial increase in severity of a previously identified significant environmental impact considered in the certified FEIR.

5. **ENTITLEMENTS; STATUTORY REQUIREMENTS FOR DEVELOPMENT AGREEMENT; PERMITTED USES; DENSITY/INTENSITY OF USE; HEIGHT AND SIZE; DEDICATION OF PUBLIC LANDS.**

5.1. **Entitlements.** The County’s Board of Supervisors has approved the following land use entitlements for the Property, which entitlements and their implementation are the subject of this Agreement:

5.1.1. Wistaria Ranch Solar Energy Center Conditional Use Permits 13-0038 thru 13-0046 and 13-0048 through 13-0049.

- 5.1.2. Wistaria Ranch Solar Energy Center Variances 13-0004 thru 13-0012, and 13-0014 through 13-0015.
 - 5.1.3. Wistaria Ranch Solar Energy Center Final Environmental Impact Report (FEIR).
 - 5.1.4. Wistaria Ranch Solar Energy Center CEQA Findings and Mitigation Monitoring and Reporting Program.
 - 5.2. **Permitted Uses.** The permitted uses of the Property are those uses authorized and described in the CUPs and Variances, those uses described in the FEIR, and those uses allowed by right within the existing zone.
 - 5.3. **Density/Intensity of Use.** The permitted density and intensity of use shall not exceed the density and intensity of the uses authorized and described in the CUPs and Variances, those uses described in the EIR, or those uses allowed by right within the existing zone.
 - 5.4. **Height and Size.** The permitted height and size of proposed structures shall be the limits allowed by the existing zone except for structures qualified to exceed the high limit described in the Variances.
 - 5.5. **Dedication/Reservation Public Lands.** The provisions for reservation or dedication of lands for public purposes are those described in the EIR for open space or habitat protection.
6. **DURATION OF AGREEMENT AND ENTITLEMENTS; PHASING; EARLY TERMINATION OF CUPS.**
- 6.1. The term of this Agreement shall commence on the Effective Date as defined in Paragraph 4.1 and shall extend for a period of ten (10) years following the Effective Date. The entitlements enumerated in Paragraph 5.1 are hereby extended for a period of ten (10) years following the Effective Date. This Agreement may be extended by mutual agreement of the Parties, or by authorization of the Planning Director, as set forth in the County of Imperial Codified Ordinances. Should the Project be subject to litigation the Term of this Agreement shall be extended accordingly.
 - 6.1.1. Any CUP on which Commencement of Construction (as defined below) has not commenced by the tenth (10th) anniversary of the Effective Date of this Agreement, shall be of no further force and effect, unless otherwise extended.
 - 6.1.2. As used here, “Commence Construction” or “Commencement of Construction” means the earlier of the date on which Developer obtains a grading permit or building permit, as may be applicable, in reliance on a CUP.

- 6.1.3. In addition to the terms and conditions of approved CUPs, the Developer shall pay on or before the issuance of the 1st Building Permit a nonrefundable contribution of **ten million dollars (\$10,000,000)** (“Nonrefundable Contribution Amount”) to go towards County projects in County’s sole discretion. This Nonrefundable Contribution Amount may be used for other public projects and purposes in County’s sole discretion.
- 6.2. The term of this Agreement may terminate sooner as provided herein.
- 6.3. This Agreement shall run with the land in each CUP area for the term of this Agreement and shall bind each and every owner of such land.
- 6.4. The Project may be constructed in phases with each CUP area serving as an individual phase. No phase shall be smaller than a single CUP. The Project may also be constructed in groups of CUP areas.
- 6.5. Notwithstanding any other provision to the Agreement or the entitlements, in no event shall any entitlement exceed forty (40) years from the Effective Date of this Agreement. Such termination of the entitlements is consensual and shall not be subject to a public hearing. Note: the CUPs may be extended for an additional ten (10)-year period by the appropriate County entity (either the Planning Director, the Planning Commission or the Board of Supervisors as set forth in the applicable County of Imperial Codified Ordinances) upon a finding that the Project is in compliance with all conditions of the CUPs as stated herein and any applicable Land Use regulation of the County of Imperial. If an extension is necessary, the Permittee shall file a written extension request with the Planning Director at least sixty (60) days prior to the expiration date of the permit. Such an extension request shall include the appropriate extension fee.

7. **RULES, REGULATIONS, AND POLICIES.**

- 7.1. County acknowledges that Developer would not enter into this Agreement or agree to provide the public benefits and improvements described in this Agreement if it were not for the commitment of the County that the Property can be developed, in accordance with County’s ordinances, rules, regulations, and policies, including but not limited to those governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications applicable to the development of the Property existing as of the Effective Date of this Agreement.
- 7.2. The Property shall not be subject to any subsequently enacted amendment, modification of, or substitution for, the General Plan, zoning, or subdivision ordinances without the mutual written consent of the County and Developer, except as otherwise provided here.
- 7.3. Except as otherwise provided in this Agreement, Developer shall have the right, to the fullest extent permitted under California Government Code Sections 65864 et seq. and provisions of the County of Imperial Codified Ordinances to: (1) develop

the Property in accordance with this Agreement, rules, regulations, ordinances, policies, conditions, environmental regulations, exactions, entitlements, assessments, payments, and fees applicable to and governing development of the Property in effect as of the Effective Date of this Agreement; and (2) develop the Property with respect to the permitted use(s) of land, density, and intensity of use(s), and timing and phasing of development as generally described in this Agreement and in the entitlements set forth in Section 5 of this Agreement in effect as of the Effective Date of this Agreement, provided that:

- 7.3.1. Developer acknowledges that the Project must comply with all future amendments, modifications, or alterations of County's building, plumbing, mechanical, electrical, signage, and fire codes.
- 7.3.2. If a conflict between this Agreement and federal or State laws or regulations arises that prevents or precludes compliance with one or more provisions of this Agreement, such provisions of the Agreement shall, without further action by either Party, be deemed suspended as may be necessary to allow continuous compliance with such State or federal laws or regulations, and such suspension shall mean that non-compliance with such suspended provisions shall not be a breach of this Agreement from and after the date on which such conflict arose. County and Developer shall meet and confer in good faith in a reasonable attempt to modify the suspended terms of this Agreement to the extent feasible so that such terms, as modified, can be met without conflicting with federal or State laws or regulations.
- 7.3.3. Nothing in this Agreement shall be construed to be in derogation of County's police power to protect the public health and safety in the event of a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services involving the Property or the community.
- 7.3.4. Developer acknowledges that the Project must comply with any new or amended ordinance, resolution, rule, regulation, or policy that does not conflict with the entitlements, or those ordinances, resolutions, rules, regulations, and policies in effect at the Effective Date, and that is generally applied equally to all real property in the County with the same zoning designations and/or land uses. A conflict is one that would significantly limit the authorized disturbance area within the CUPs. Developer further acknowledges that this Agreement does not prevent the County from denying or conditionally approving any subsequent discretionary development project application on the basis of such existing or new rules or regulations.
- 7.3.5. This Agreement shall not be construed to limit the authority or obligation of County to hold necessary public hearings, or to limit the discretion of County or any of its officers or officials with regard to rules, regulations,

ordinances, laws, and entitlements of use that require the exercise of discretion by County, or any of its officers or officials, provided that subsequent discretionary actions: (1) shall not prevent or delay development of the Property for the uses and to the density and intensity of development as provided by this Agreement and the other entitlements in effect as of the Effective Date of this Agreement; and (2) shall not be inconsistent with the entitlements.

8. **INFRASTRUCTURE CAPACITY**. Subject to conditions of approval requiring specific upgrades, County hereby acknowledges that it has been informed that the Project will have sufficient capacity in its services, and utility systems, including without limitation, traffic circulation, flood control, water supply treatment, distribution, and service, to accommodate the Project.

8.1. Prior to the issuance of final Certificate of Occupancy, the Project/CUP owner shall be responsible for repairing of any roads and bridges it will utilize via improvements as determined by the County Road Commissioner based on the final and approved access points in the Project's grading and improvements plans.

9. **PUBLIC BENEFITS PROVIDED BY DEVELOPER**. County acknowledges that Developer's performance under this Agreement provides significant public benefits to County, including, but not limited to:

9.1. **FEIR Mitigation Measures and Conditions of Approval**. Notwithstanding any other provision in this Agreement to the contrary, if Developer elects to develop the Project on the Property, Developer shall be bound by, and shall perform, all CUP provisions, conditions of approval and mitigation measures for which Developer is responsible as contained in the Project entitlements and certified FEIR for the Project, as well as those provided in this Agreement, and failure to do so without prior County authorization shall be a default under this Agreement as well as CUPs. In the event of a conflict among the terms of Agreement, CUPs and the FEIR / MMRP, the hierarchy of documents that shall control the Parties' rights and obligations are the FEIR, the Agreement, MMRP, then CUPs.

9.2 **Public Service Benefit**. Developer shall make Public Service Benefit payments to County, which will be used to provide for a concerted and coordinated effort to maximize the benefits of the solar project to the County of Imperial and its residents (the "Public Service Payment"). Such benefits might include, but are not limited to, infrastructure improvement, job creation, community services, economic development and enhancement to the quality of life in neighboring communities. Developer shall pay the Public Service Payment as follows:

9.2.1. **Annual Payment Structure**. Developer shall make annual Service Benefit payments pursuant to the Public Benefit Program Guidelines (attached hereto as **Exhibit "C"**), the payment structure shall be as follows:

a) Each year, beginning on the Public Service Payment Date (as

defined below), as specified within the site-Specific Conditions within the Conditional Use Permit shall be limited to a maximum of thirty (30) years from the recordation of the permit. The Developer shall pay to County an amount equal to six hundred dollars (\$600) per acre of farmland for of the Project. The Developer shall pay to County an amount equal to four hundred fifty dollars (\$450) per acre of non-farmland for of the Project. Payment for farmland and non-farmland shall be increased annually to reflect a CPI of 2.5 percent.

- b) In any event, Developer shall be responsible for annual Service Benefit Payments for each and every year the project remains in operation, until such time as the Project is decommissioned and the Project site is returned to its original condition, as required by the Project CUP.

9.2.2. Due Date. The first Service Benefit Payment is due and shall be paid to the County Executive Office prior to the issuance of the first grading permit or building permit (whichever is issued first) for energy producing facilities on the Site (the “Service Benefit Payment Date”) and every twelve (12) months thereafter until the expiration of the term of this Agreement in accordance herewith.

9.2.3. Late Payments. If Developer receives a bill from County, payment to County shall be due within thirty (30) days of Developer’s receipt thereof. Payments received by County after the thirtieth (30th) day following Developer’s receipt of a bill shall be deemed late. Developer hereby agrees to pay interest at the rate of six percent (6%) per annum of the payment due on the amount of any payment received by County beyond the due date. Said interest shall be included with the late payment. The obligation to pay interest shall be stayed when such amounts are disputed in good faith, so long as Developer submits the payments “under written protest.” Upon determination of dispute, such interest may be assessed if it is determined that the dispute was not made in good faith.

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

- a) County may adopt new or modified Rules, Regulations, and Official Policies after the Effective Date of this Agreement (“New Rules”); provided, however, such New Rules shall be applicable to the Project only to the extent that such application will not result in the payment of amounts above the Agriculture Benefit and Community Benefits amounts due and payable to the County pursuant to this Agreement.
- b) Notwithstanding the foregoing, County shall not be precluded from applying any New Rules to the Project where the New Rules are:

1. Specifically mandated by changes in state or federal laws or state or federal regulations adopted after the Effective Date;
2. Specifically mandated by a court of competent jurisdiction;
3. Changes to the Uniform Building Code or similar uniform construction codes, or to County's local construction Ordinances for public improvements so long as such code or Ordinance has been adopted by County and is in effect on a County-wide basis and is not applied retroactively (in the event of a conflict between this Section and Section II.B.2.a, Section II.B.2.a shall prevail.);
4. Required as a result of facts, events or circumstances presently unknown or unforeseeable that would otherwise have an immediate adverse risk on the health or safety of the surrounding community; or
5. New or increased regulatory processing fees so long as such fees are not applied retroactively and are applied to all development projects on a countywide basis. (In the event of a conflict between this Section and Section II.B.2.a, Section II.B.2.a shall prevail.)

9.2.5. California State Property Tax Exemption: If the property taxes for the Project exceed the base year assessment determined after the completion of the Project, plus two percent (2%) annual increase, then ten percent (10%) of that increase in property taxes is credited to the Service Benefit payment due that year. The Parties agree that the Project shall have a guaranteed assessed valuation of \$57,529,690, and the depreciation rate for property tax purposes shall be based on the County of Imperial Commercial Year (C-30) depreciation schedule. The applicable Depreciation Table is attached hereto as **Exhibit "D"**. The Parties agree that any Property requiring assessment shall be assessed utilizing an income approach. The Parties further agree that all assessed Property values shall increase by a fixed rate of 2% per annum, including but not limited to non-solar improvements and battery storage, irrespective of the Consumer Price Index or any other factor, to ensure that County and other regional taxing authorities receive the scheduled revenue. This Agreement shall be in full compliance with Proposition 13 in all other aspects. Developer and Property owner(s) agree not to appeal the Property's assessed value to the County Board of Equalization / Assessment Appeals Board for the duration of the Project operation, or 30 years, whichever comes first. This is necessary to mitigate the fiscal costs to County to host this facility and Project.

9.2.6. Periodic Compliance Review. County shall review Developer's good faith compliance with the terms of this Agreement on an annual basis.

Developer shall submit evidence of good faith compliance with this agreement on an annual basis.

9.3. Sales Tax Benefit.

- 9.3.1.** Developer will require that all qualifying contractors and subcontractors exercise their option to obtain a California Department of Tax and Fee Administration (CDTFA) sub-permit for the jobsite and allocate all eligible use tax payments to Imperial County and LTA.
- 9.3.2.** Prior to commencement of any construction activity at the Project Site, Developer shall require that the contractor or subcontractor provide County with a copy of their CDTFA account number and sub-permit. Developer shall either cause its construction contractor to treat the Project in accordance with California Sales and Use Tax Regulation 1521(b)(2)(B), California Sales and Use Tax Regulation 1521(c)(13)(B), and California Sales and Use Tax Regulation 1826(b) for sales and use tax purposes, or form a “Buying Company” as defined in the California Sales and Use Tax Regulation 1699(h). Developer may adopt an alternate methodology to accomplish this goal if such methodology is approved by the County’s Executive Officer, which approval shall not be unreasonably withheld or delayed, prior to issuance of any building permit.
- 9.3.3.** No later than forty-five (45) days after the due date for filing sales and use tax returns for each calendar quarter, occurring after the commencement of any construction activity on-site through and including the first anniversary of commercial operating date (“COD”), Developer shall report to County, the total amount of sales and use taxes related to the Project that are allocated to the County, and reported on Developer’s, general contractor’s and subcontractors’ applicable California sales and use tax returns.
- 9.3.4.** Guarantee Amounts. Prior to the issuance of any building permit for the Project, Developer shall provide County with a guarantee of the minimum sales and use taxes (based on a total output capacity of one hundred megawatts [“100 MW”] alternating current solar generation facility with an integrated two hundred [“200 MW”] megawatt battery storage system for the Project) that will be received by County and LTA under existing applicable sales and use tax laws. Developer warrants that the sales/use tax guarantee amounts to be provided to County as mandated in this paragraph shall be true and accurate estimates of the projected sales and use taxes that will be generated for this Project. Developer shall provide County with evidence of the projected sales/use taxes for the Project, including but not limited to sales tax receipts, and executed or anticipated engineering contracts, procurement contracts, and construction contracts. If the Parties

are unable to agree upon a guarantee amount, then the dispute shall be referred to an independent accountant mutually acceptable to both Parties. The costs for such nonbinding mediation shall be borne by Developer. Developer warrants that the sales/use tax guarantee amounts to be provided to County as mandated in this paragraph will incorporate any and all sales/use tax exemptions that Developer and/or its contractors and subcontractors intend to utilize, and that such exemptions will be disclosed to County fully and in good faith prior to the issuance of any building permit for this Project. Developer understands and acknowledges that the sales/use tax guarantee amounts to be provided to County as mandated by this paragraph are a part of the consideration to be received by County in return for entering into this Agreement, and further understands and acknowledges that County would not enter into this Agreement but for said guarantee from Developer. In the event that County and / or LTA receives less than the amount of sales / use taxes guaranteed pursuant to this paragraph, then Developer shall pay, as and when provided below, to County or LTA as applicable, the amount of the applicable shortfall.

9.3.5. Adjustments to Guarantee Amounts.

- (a) The amount of sales and use tax anticipated to be generated is based on the projected construction of a one hundred (100) megawatt alternating current (100 MW [AC]) solar generation facility with an integrated two hundred (200) megawatt battery storage system. Construction of any additional output capacity beyond the 100 MW output or storage capacity now projected will require the sales / use tax guarantee amounts to be adjusted based on the actual output from solar generation facilities of the Project as evidenced by any power purchase agreement subsequently entered into by Developer related to this Project.
- (b) To the extent of any reduction in the size of the Project as the result of any final ruling, stipulated judgment, or settlement, the sales / use tax guarantee amounts mandated under paragraph D shall be reduced pro rata based on the size of such reduction. To the extent of any reduction in the size of the Project as the result of any final ruling, stipulated judgment, or settlement, in accordance with Section V.C below, the not-to-exceed amounts set forth in Section III.B shall be reduced pro rata based on the size of such reduction.

9.3.6. The complete amount due to County for the Project must be received within one (1) year after Commercial Operation Date (“COD”) for this Project. If, within one (1) year after issuance of the final Certificate of Occupancy, the sales and use taxes received by the County are less than the amount guaranteed for that portion of the project, Developer shall pay the difference to the County.

- 9.3.7.** Payments to County and LTA as a result of a shortfall shall be due within thirty days of Developer's receipt of written notice of shortfall from the County. Payments received by County after the ninetieth (90th) day following Developer's receipt of notice shall be deemed late. Developer hereby agrees to pay interest at the rate of six percent (6%) per annum of the payment due for any payment received by County beyond the due date. Said interest shall be included with the late payment. The obligation to pay interest shall be stayed when such amounts are disputed in good faith, so long as Developer submits the payments "under written protest." Upon determination of dispute, such interest may be assessed if it is determined that the dispute was not made in good faith.
- 9.3.8.** In the event that Developer repowers or replaces the equipment onsite, each Site shall be designated as the "Point of Sale" so as to create an additional local tax-funding source for the County of Imperial.
- 9.3.9.** Developer shall provide an approved water supply capable of supplying the required fire flow to the Project as determined by Appendix B of the 2019 California Fire Code. Developer shall be responsible for all costs associated with the provision of the water supply, including but not limited to installation and maintenance. Developer shall also install and maintain private fire service mains and appurtenance in accordance with NFPA section 24. Project will provide adequate Fire water. Fire Department will determine number of gallons to be placed strategically once site plan is reviewed.
- 9.3.10.** An approved automatic fire suppression system shall be installed on all required structures as per the adopted California Fire Code at time of building permit issuance. All fire suppression systems will be installed and maintained to the current adapted fire code and regulations.
- 9.3.11.** An approved automatic fire detection system shall be installed on all required structures as per the California Fire Code. All fire detection systems will be installed and maintained to the current adapted fire code and regulations.
- 9.3.12.** Developer must develop an Emergency Operation Plan in conjunction with local fire service personnel and the AHJ and hold a comprehensive understanding of the hazards associated with solar power plant technology and must incorporate adequate explosion prevention protection as required in NFPA 855 and International Fire Code Chapter 12.
- 9.3.13.** Project access roads and gates will be installed and maintained in accordance with the current adapted fire code. Developer shall maintain a Knox Box for access to the Project site. Developer will install signage that

identifies the contents of an ESS as required on all ESS installations to alert first responders to the potential hazards associated with the installation.

9.3.14. Developer shall provide product containment areas(s) for both product and water run-off. All product and water runoff shall be retained for removal in accordance with applicable law.

9.3.15. All hazardous materials shall be handled, stored, and disposed of in accordance with an approved Hazardous Waste Materials Plan (“HWMP”). All spills shall be documented and reported to County Fire/OES and the County Certified Unified Program Agency as required by applicable law. The Hazardous Waste Material Plan shall be submitted to Certified Unified Program Agency (CUPA) for their review and approval.

9.3.16. Any Fire Mitigation Payments set out in the CUP are separate from the payments required under this section.

10. VALUE OF PAYMENTS. In addition to other provisions of this Agreement, all payments referenced in this Agreement shall escalate annually beginning on January 1, 2025, based upon the Consumer Price Index – Los Angeles SMSA – all urban consumers (“CPI”), but in no case shall the CPI be less than zero (0).

11. EMINENT DOMAIN. The Parties to this Agreement understand and acknowledge that County has no present or foreseeable future need to acquire public access to the Project not already authorized under the CUP and/or County-issued entitlements for this Project. However, should a future need arise in which County requires additional public access to the Project, County shall, before engaging in any eminent domain proceedings, meet and negotiate in good faith with Developer concerning the proposed public access to the Project.

12. PERIODIC REVIEW.

12.1. County shall review the extent of good faith compliance by Developer with the terms of this Agreement at least every twelve (12) months pursuant to California Government Code section 65865.1.

12.2. Upon written request from the County, Developer shall have the duty to demonstrate its good faith compliance with the terms of this Agreement.

12.3. Any County failure to annually review Developer’s compliance with the terms and conditions of this Agreement shall not constitute or be asserted by County or Developer to be a breach or default of the Agreement, and shall not be used as grounds to amend, modify, alter, or terminate the Agreement.

13. ASSIGNMENT AND DELEGATION. As set out here, Developer may sell, transfer, or assign (collectively, “assign”) all or part of Developer’s rights, title and interest in the Project. This Agreement shall be binding on all successors in interest of the Developer pursuant to County of Imperial Codified Ordinances Code Section 92325.

- 13.1. Partial Assignment.** When one or more CUP is assigned, but the assignment is of less than the entire Project area, the assignment is referred to herein as a “partial assignment.” The assignment, including but not limited to any partial assignment, shall expressly include the assignment and assumption of all rights, duties, and obligations arising under or from this Agreement, other County-issued entitlements and the MMRP applicable to the CUP. There shall be no assignment of less than the entire CUP area, and any such attempted assignment is void.
- 13.2.** Developer shall not, without prior notification to the Imperial County Planning and Development Services Department, assign, sell, transfer, or grant control of the Project, or any right or privilege therein granted by the CUP. The Developer shall provide a minimum of forty-five (45) days written notice prior to any proposed transfer becoming effective. An approved assignment agreement shall be in place for the new Project owner to build and maintain as agreed to by the conditions set forth in this Agreement. The County Assessor’s Office shall be notified of any ownership change.
- 13.3.** Within fifteen (15) calendar days after an assignment: (1) Developer shall notify the County, in writing, of such assignment and shall provide County with both: (a) an executed copy of the assignment evidencing that the assignee expressly assumes all the assigned duties and obligations of Developer under this Agreement, other County-issued entitlements, and the MMRP applicable to the CUP area; and (b) Developer’s requested form of release of such duties and obligations related to that CUP area; (2) assignee shall provide County with the assignee’s financial security equal in value to the financial security required of Developer by the Project entitlements including any and all entitlement-required increases to secure performance of its obligations with respect to the portion of the Project assigned, including but not limited to that for the decommissioning and reclamation plan; and (3) Developer and/or assignee shall provide any and all additional information necessary to determine the sufficiency of such replacement financial security. As used here “financial security” may mean one or more security instruments which can include letters of credit, performance bonds, or other forms of security consistent with those previously accepted by the County for this or other development projects in the County.
- 13.4.** Within forty-five (45) calendar days of delivery of the information required under Paragraph 13.3, the County Planning and Development Services Department shall determine the sufficiency of the replacement security in its reasonable discretion, which can include letters of credit, performance bonds, or other forms of security consistent with those previously accepted by the County for this or other development projects. The County shall have the discretion to require security having a greater value (i.e. a larger face amount) than the security being replaced related to that CUP area when such security is subject to increase pursuant to the provisions of the CUP. Notwithstanding the failure of any assignee to execute the assignment or provide the required security, the burdens of this Agreement shall be binding upon such assignee, but the benefits of this Agreement shall not inure to such assignee until and unless such assignment is executed, and such security is

provided and the County has delivered a written release to Developer confirming the sufficiency of the replacement security.

- 13.5. Notwithstanding any sale, transfer, or assignment, Developer shall continue to be obligated under this Agreement until the County executes a release of such financial security. The County's unreasonable failure to approve the assignment or execute such release may be a default under Section 18 of this Agreement.
- 13.6. County shall be reimbursed by Developer for any costs of review of the replacement financial security instrument(s).
14. **RELATIONSHIP OF COUNTY AND DEVELOPER.** The contractual relationship between County and Developer arising out of this Agreement does not create an agency relationship.
15. **INDEMNIFICATION AND HOLD HARMLESS.**
- 15.1. Developer shall indemnify and shall hold the County, its officers, agents, attorneys and employees harmless from third-party liability, claims, demands, expenses or costs, including but not limited to costs of experts and separate attorneys chosen by County at County's sole discretion: (1) to attack, set aside, void or annul this Agreement, any entitlement, CUP, approval or the certification of any environmental document accompanying such entitlements, or any determination made under such CUP or this Agreement, whether there is concurrent, passive, or active negligence on the part of the County, its officers, agents, attorneys, or employees; or (2) for personal injury (including but not limited to death), property damages, just compensation, judicial or equitable relief, arising or alleged to arise from the direct or indirect operations of the Developer or its contractors, subcontractors, agents, employees, or other persons acting on Developer's behalf that relate to the Project (including but not limited to Developer's actions or failure to act in drilling, grading, construction, operation, abandonment, reclamation or decommissioning) of the Project or any CUP.
- 15.2. Developer shall execute County's most current form of indemnification funding agreement. County and Developer shall cooperate in the defense against claims subject to these indemnities and Developer shall enter into the applicable form of agreement to confirm such joint defense. Notwithstanding, Developer's failure to provide payment of any fees or costs required under this Agreement shall cause Developer to be in non-compliance with this Agreement. Upon notification of such non-compliance, County may, at its sole discretion, cease processing of the Project or defending any lawsuit or paying for costs associated with the Project.
16. **AMENDMENT OR CANCELLATION.** This Agreement may be amended or canceled by the mutual consent of County and Developer, in the manner set forth in California Government Code section 65868 and County of Imperial Codified Ordinances Sections 92306.00 and 92306.01.

17. **MINOR MODIFICATION.** Unless as otherwise required by law (including but not limited to the County of Imperial Codified Ordinances) interpretations and minor modifications or changes can be made to the Project with the mutual agreement of Developer and the County's Planning Director, only in one (1) of the following circumstances:
- 17.1. Where the change is: (i) ministerial or mutually agreeable to the County's Planning Director and Developer; (ii) constitutes an administrative interpretation or less than significant amendment; (iii) constitutes a change or technical modification to the design, construction, and/or operation of the Project under the existing applicable rules, regulations, and laws of the County; or (iv) amends the CUP to allow development and operation of the Project subject to two or more CUPs, provided that the subsequent CUPs shall be bound by the effective date and term of the original CUP, and does not:
- 17.1.1. Alter the permitted uses of the Property as a whole or within any CUP;
- 17.1.2. Increase the density or intensity of use of the Property as a whole or within any CUP;
- 17.1.3. Increase the maximum height and size of permitted buildings or structures;
- 17.1.4. Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole;
- 17.1.5. Conflict with a condition of approval or MMRP provision; or
- 17.1.6. Constitute a discretionary approval by the County for which a subsequent or supplemental environmental impact report would be required pursuant to Section 21166 of the California Public Resources Code.
- 17.2. Where the change is ministerial, mutually agreeable to County and Developer, and constitutes an administrative interpretation, less than significant amendment, or change or technical modification to the design, construction, and/or operation of the Project under the existing applicable rules, regulations, and laws of non-County agencies as to Project matters within their sole jurisdiction.
18. **DEFAULT.** A default under this Agreement shall be deemed to have occurred upon the happening of one or more of the following events or conditions:
- 18.1. A warranty, representation, or statement made or furnished in this Agreement by either Party proves to have been false in any material respect when it was made.
- 18.2. A finding by County pursuant to County of Imperial Codified Ordinances Sections 92308.00 and 92308.01, based on substantial evidence, that the Developer has not complied in good faith with one or more of the terms or conditions of this Agreement.

18.3. Any other act or omission by either Party which breaches or materially interferes with the terms of this Agreement.

18.4. A default under this Agreement with respect to obligations owed to the County by the Developer shall not constitute a default under this Agreement to the extent this Agreement has been partially assigned to another entity in accordance with Section 13, and a default under this Agreement with respect to obligations owed to the County by an assignee of a portion hereof in accordance with Section 13 shall not constitute a default under this Agreement by the Developer.

19. **PROCEDURE UPON DEFAULT.**

19.1. Upon the occurrence of default by Developer or County, prior to any proceedings pursuant to Title 9, Division 23 of the County of Imperial Codified Ordinances, and as an informal resolution procedure prior to any litigation being filed (including but not limited to any breach of contract action), the non-defaulting party shall provide the other party written notice specifying the nature of the alleged default and the actions required to cure such default. Such notice shall not be required in the event the default creates a threat to public health and safety.

19.2. After proper notice, the non-defaulting Party has the option to terminate the Agreement if: (1) the defaulting Party fails to take such actions or otherwise cure such default within forty-five (45) calendar days after the receipt of such notice; or (2) in the event that such default cannot be cured within such forty-five (45) calendar day period but can be cured within a longer time, the defaulting party fails in such forty-five (45) day period to commence the actions necessary to cure such default and to diligently proceed to complete such actions and cure such default.

19.3. All other remedies at law or in equity which are not inconsistent with the provisions of this Agreement are available to County and Developer to pursue in the event there is a default.

20. **LEGAL ACTION.** Either Party may institute legal action to cure, correct, or remedy any default, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation, or to compel specific performance. In no event shall County or its officers, employees or agents be liable in damages for any breach of this Agreement, it being expressly understood and agreed that the sole remedy available to Developer for a breach of this Agreement by County shall be a legal action in mandamus, specific performance (including the return of protested fees or other payments), injunction or declaratory relief to enforce the Agreement.

21. **ATTORNEYS' FEES.** In the event any legal action is brought to enforce or construe this Agreement, the prevailing Party shall be entitled to an award of reasonable attorneys' fees, expert witness and consulting fees, and litigation costs.

22. **DISCRETION TO ENCUMBER.** This Agreement shall not prevent or limit Developer from encumbering the Property, or any improvement on the Property, by any mortgage, deed of trust, or other security device.

23. **ENTIRE AGREEMENT; WAIVER AND RECORDED STATEMENT.** This Agreement constitutes the entire understanding and agreement of County and Developer with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between County and Developer respecting this Agreement. Any County waivers of the provisions of this Agreement must be authorized by the terms of this Agreement or by County ordinance, and approved as set out therein. Any waiver by Developer shall be in writing. No waiver of any term or condition of this or any determination of a protest hereunder shall be a continuing waiver or determination hereunder. Upon the completion of performance of this Agreement, or its revocation or termination, a statement evidencing completion, revocation, or termination signed by the appropriate agents of County shall be recorded in the Official Records of Imperial County, California.

24. **NOTICES.**

24.1. All notices or deliveries required or provided for by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the following:

COUNTY

County of Imperial
Attn: County Executive Officer
940 W. Main St., Suite 208
El Centro, CA 92243

DEVELOPER

RWE Clean Energy
101 West Broadway, Suite 1120
San Diego, CA 92101

With a copy to:

County of Imperial Planning Department
Attn: Planning Director
801 Main Street
El Centro, CA 92243

24.2. County or Developer may change its address by giving notice in writing to the other Party. All notices or deliveries shall be deemed to have been given when received.

25. **CAPTIONS.** The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify, or aid in the interpretation, construction, or meaning of any provision of this Agreement.
26. **RECORDING.** The Clerk of the Board shall cause a copy of this Agreement to be recorded with the Office of the County Recorder of Imperial County, California, within ten (10) days following the execution of this Agreement, pursuant to California Government Code section 65868.5.
27. **INTERPRETATION AND GOVERNING LAW.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the state of California.
28. **VENUE.** In the event of any legal or equitable proceeding arising out of or relating to this Agreement, the Parties agree that venue shall lie only in the federal or state courts located in the County of Imperial.
29. **TIME OF ESSENCE.** Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.
30. **UNENFORCEABLE PROVISIONS.** The terms, conditions, and covenants of this Agreement shall be construed, whenever possible, as consistent with applicable laws and regulations. To the extent that any provision of this Agreement as so interpreted is held to violate any applicable law or regulation, the remaining provisions shall nevertheless be carried into full force and effect and remain enforceable.
31. **REPRESENTATION OF CAPACITY TO EXECUTE CONTRACT.** Each Party to this Agreement represents and warrants that the person or persons signing have the authority to execute this Agreement on behalf of the Party represented by those individuals.
32. **NO WAIVER.** The failure of either Party to enforce any term, covenant, or condition of this Agreement on the date it is to be performed shall not be construed as a waiver of that Party's right to enforce this or any other term, covenant, or condition of this Agreement at any later date, or as a waiver of any term, covenant, or condition of this Agreement.
33. **COUNTERPARTS.** This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all the Parties had executed the same instrument.
34. **FORCE MAJEURE.** Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations is beyond its reasonable control, such as, floods, earthquakes, acts of God, fires, wars, riots or similar hostilities, strikes, and other labor difficulties. Economic factors shall not be considered beyond the reasonable control of a Party.
35. **GENDER, NUMBER AND INTERPRETATION.** As used herein, the neutral gender includes the masculine and feminine, the feminine gender includes the masculine, and the masculine gender includes the feminine. As used herein, the singular of any word includes

the plural. In the event of an ambiguity, there shall be no presumption against the drafter, all Parties hereto being represented by counsel.

- 36. **FURTHER COOPERATION.** Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement, and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute with acknowledgment or affidavit (if reasonably required) and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and fulfill the provisions of this Agreement, or to evidence or consummate the transactions contemplated by this Agreement. Notwithstanding the foregoing sentence, if Developer delivers to County a written request for an estoppel certificate confirming that there is no default under this Agreement, that this Agreement is in full force and effect, or that this Agreement has not been amended, then the County shall use its best efforts to respond within twenty (20) calendar days of the provision of such estoppel certificate and all necessary supporting information for such issuance.
- 37. **SURVIVAL.** Developer’s payment obligations to County as specified in Sections 9 and 10 shall survive the expiration or termination of this Agreement.

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IN WITNESS WHEREOF, the Parties have notarized and executed this Agreement as of the Effective Date stated in this Agreement as authorized by Ordinance No. _____ of the Board of Supervisors of the County of Imperial.

County of Imperial

RWE Clean Energy

By: _____
Luis A. Plancarte, Chairman
Imperial County Board of Supervisors

By: _____
Christina Gispert
Director, Region West

Date: _____

Date: _____

ATTEST:

By: _____
Blanca Acosta, Clerk of the Board,
County of Imperial, State of California

Date: _____

APPROVED AS TO FORM:

By: _____
Eric Havens
County Counsel

Date: _____

Exhibit A
Legal Descriptions

CONDITIONAL USE PERMITS

CUP 13-0038

052-180-045

Parcel II:

The Southwest quarter of Section 2, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof.

Excepting therefrom, the West 25 feet *and* the South 25 feet thereof, conveyed to the County of Imperial by deed recorded December 10, 1937, in Book 475, Page 325 of Official Records.

(APN: 052-180-045)

CUP 13-0039

052-180-034

Parcel II:

The West half of the Southeast quarter of Section 2, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the official government plat thereof.

(APN: 052-180-034)

052-180-054

That portion of the East Half of the Southeast quarter of Section 2, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official plat thereof, described as follows:

Parcel 2 on Parcel Map M-1420 on file in Book 6, Page 4 of Parcel Maps in the Office of the County Recorder of Imperial County.

(APN: 052-180-054)

CUP 13-0040

052-180-015

Parcel III:

Lots 3 and 4 *and* the South half of the Northwest quarter of Section 2, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof.

(APN: 052-180-015)

CUP 13-0041

052-180-012

Parcel II:

Lots 1 and 2 *and* the South half of the Northeast quarter of Section 3, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof.

(APN: 052-180-012)

CUP 13-0042

052-180-011

Parcel 3:

Lots 3 and 4 in Section 3, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: Portion of 052-180-011)

Parcel 4:

The Southeast quarter of the Northwest quarter of Section 3, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: Portion of 052-180-011)

052-180-002

Parcel I:

The West half of the Southwest quarter of Section 3, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof. Excepting therefrom, that portion lying South of the Greeson Drain.

(APN: 052-180-002)

052-180-001

The Southwest quarter of the Northwest quarter of Section 3, Township 17 South, Range 13 East, San Bernardino Base and Meridian, according to the map of the official government plat thereof.

(APN: 052-180-001)

052-170-014

Parcel I:

The Southeast quarter of the Northeast quarter of Section 4, Township 17 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof.

(APN: 052-170-014)

052-440-009

Parcel 2:

Lots 22 and 25 in Section 33, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: 052-440-009)

CUP 13-0043

052-350-021

Parcel 1:

That portion of Tract 213, being that portion of Section 34, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the Official Plat thereof, described as follows:

Beginning at the northeast corner of Lot 14, Section 34; thence running South 00°07'00" East, a distance of 1,102.20 feet to the southwest corner of Lot 22, of said Section; thence North 89°58'00" West, a distance of 17.00 feet to a point; thence South 00°22'00" West, a distance of 304.03 feet to a point; thence North 89°58'00" West, a distance of 1,220.52 feet to a point; thence North 00°07'00" East, a distance of 1,406.50 feet to a point intersecting the north boundary of Lot 12, in said Section 34; thence South 89°58'00" East, a distance of 1,238.85 feet to the point of beginning.

(APN: Portion of 052-350-021)

Parcel 2A:

That portion of Tract 213 *and* portion of Lots 30 and 32 in Section 34, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the Official Plat thereof, described as follows:

Beginning at the northwest corner of said Tract 213; thence South, on and along the west line of said Tract, 40 feet; thence East, on a line parallel with the north line of said Tract, 296.00 feet; thence South, on a line parallel with the west line of said Tract,

296.00 feet; thence West, on a line parallel with the north line of said Tract, 296.00 feet to the west line of said Tract; thence South, on and along the west line of said Tract, 2,304 feet to the southwest corner of said Tract; thence East, on and along the south line of said Tract, 260.04 feet; thence South 20.04 feet; thence East, on a line parallel with the south line of said Tract, 2,196.13 feet; thence North 00°22'00" East, 1,262.18 feet; thence West 1,220.52 feet; thence North 00°07'00" West

1,406.50 feet to the north line of said Tract; thence West, on and along the north line of said Tract, 1,238.80 feet to the northwest corner of said Tract, the point of beginning.

Excepting therefrom, the right and title to the structures, trees and major vegetation located on that portion of the property lying within the Northerly 300.00 feet of the Westerly 600.00 feet of said Tract 213, as conveyed to San Diego Gas and Electric Company, a corporation, by deed recorded September 29, 1982 in Book 1490, Page 1200 of Official Records.

(APN: Portion of 052-350-021)

Parcel 2B:

All structures, trees and major vegetation situated on:

The Northerly 300.00 feet of the Westerly 600.00 feet of Tract 213, Section 34, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof, according to the Official Plat thereof.

Excepting therefrom, that portion of Tract 213, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the Official Plat thereof, described as follows:

Commencing at the northwest corner of said Tract 213; thence South on the west line of said Tract, 40.00 feet to the point of beginning; thence East 296.00 feet; thence South 296.00 feet; thence West 296.00 feet to the west line of said Tract; thence North, on the west line of said Tract, 296.00 feet to the point of beginning.

(APN: Portion of 052-350-021)

052-350-022

Parcel 3:

That portion of Tract 213, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, State of California, according to the Official Plat thereof, described as follows:

Commencing at the northwest corner of said Tract 213; thence South on the west line of said Tract, 40.00 feet to the point of beginning; thence East 296.00 feet; thence South 296.00 feet; thence West 296.00 feet to the west line of said Tract; thence North, on the west line of said Tract, 296.00 feet to the point of beginning.

(APN: 052-350-022)

CUP 13-0044

052-440-006

Parcel 1:

The South half of Tract 155, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: 052-440-006)

CUP 13-0045

052-350-020

Lot 35 in Section 34 and Lot 36 in Section 35, Township 16 South, Range 13 East, San Bernardino Base and Meridian, and that portion of Tract 293, Township 16 South, Range 13 East, San Bernardino Base and Meridian, , in an unincorporated area of the County of Imperial, State of California, according to the official government plat thereof, described as follows:

Commencing at the southeast corner of said Tract 292; thence South 89°53'00" West along said line of said Tract, 2,718.00 feet, more or less, to a point in the east bank of the irrigation canal; thence North 00°07'00" West 1,023.36 feet, more or less, to the center line of the county road marking the north boundary of the within described land; thence North 89°53'00" East along said center line of said county road, 1,625.00 feet to a point; thence North 75°29'00" East along said center line of said road, 234.00 feet to a point; thence North 42°47'00" East along center line of said road, 951.00 feet, more or less, to the line of the tract of land conveyed by I. W. Van Dorin and Henrietta Van Dorin to Herbert Potter and Lettie Potter, by deed dated May 20, 2008, recorded in Book 39, Page 33 of Deeds; thence South 66°05'00" East along center line of said county road and along said line of said Potter's land to a point in east line of said Tract 293, which point is also the southeast corner of the land conveyed as above to said Potter; thence South 00°07'00" East, along said east line of said Tract to the point of beginning.

(APN: 052-350-020)

CUP 13-0046

052-350-001

Parcel 2:

Tract 212, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: 052-350-001)

052-350-001, 052-350-002, 052-350-004

Parcel 3:

That portion of Tracts 97 and 293, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof, described as follows:

Parcels A, B, C and D of that certain survey on file in Book 10, Page 6 of Licensed Survey Maps, records of Imperial County.

(APN: 052-350-001; -002 and -004)

052-350-003

Those portions of Tracts 97 and 293, Township 16 South, Range 13 East, San Bernardino Base and Meridian, included within the following described boundaries:

Beginning at a point in the north line of the county road which is North 89°59'00" West, 279.30 feet and South 36°43'00" East, 341.50 feet from the southeast corner of said Tract 97, said point of beginning being the southeast corner of Parcel C as shown on a Licensed Survey Map on file in Book 10, Page 6; thence North 36°43'00" West, 1,286.90 feet; thence North 26°56'16" West, 387.87 feet; thence South 89°59'00" East, 401.75 feet; thence South 49°13'30" East, 594.21 feet to the northeast corner of Parcel Bas shown on said Survey Map; thence South 49°33'00" West, 242.80 feet; thence South 38°01'00" East, 1,023.70 feet to the north line of the county road; thence Westerly along the county road to the point of beginning.

(APN: 052-350-003)

CUP 13-0048

052-440-005

The East 2,655.00 feet of Tract 154, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in the unincorporated area of the County of Imperial, State of California, according to the Official Plat thereof.

(APN: 052-440-005)

CUP 13-0049

052-440-003

Parcel II:

The West 60 feet of Tract 154, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof, *lying* North of the Imperial Irrigation District Drainage Canal as located July 25, 1936.

(APN: 052-440-003)

052-440-004

Parcel I:

The North 20 feet of the West 2,625 feet of Tract 154, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

(APN: Portion of 052-

440-004) Parcel III:

The West 2,625 feet of Tract 154, Township 16 South, Range 13 East, San Bernardino Base and Meridian, in an unincorporated area of the County of Imperial, according to the Official Plat thereof.

Excepting therefrom, the North 20 feet thereof.

Also excepting therefrom, the West 60 feet thereof *lying* North of the Imperial Irrigation District Drainage Canal as located July 25, 1936.

(APN: Portion of 052-440-004)

Attachment D
DA Request from applicant



February 7, 2023

Jim Minnick
Director, Planning and Development Services
County of Imperial
801 Main Street
El Centro, California 92243
E-Mail: JimMinnick@co.imperial.ca.us

RE: CED Wistaria Solar 2 DA Reissue Substantially Complete

Dear Mr. Minnick,

I am pleased to inform you that the CED Wistaria Solar Project (formerly known as the Wistaria Ranch Solar Energy Center) draft Development Agreement (DA) reissue is now substantially complete and ready to be made available for the public hearing process.

RWE submitted a formal request on November 16, 2023 to extend the construction deadlines for the CUP/DA. Since then, RWE has been collaborating with the County of Imperial to provide the necessary analysis and engage in negotiations to ensure public benefits are adequately addressed.

The County and RWE have reached an agreement on all relevant terms except for the sole dollar amount due prior to the start of construction. This remains the only piece of negotiation left.

We look forward to continued collaboration and the successful reissuance of the DA.

If you need more information please contact me.

Sincerely,

A handwritten signature in black ink that reads 'Cristina Gispert'.

Cristina Gispert
Director, Utility-Scale Development Region West

RWE Clean Energy, LLC

101 West Broadway
Suite 1120
San Diego, CA 92101
USA

T +1-619-609-1803
www.rwe.com



November 16, 2023

VIA E-MAIL AND U.S. MAIL

Jim Minnick
Director, Planning and Development Service:
County of Imperial
801 Main Street
El Centro, California 92243
E-Mail: JimMinnick@co.imperial.ca.us

Re: CED Wistaria Solar Project – Request for Extension of Commencement of Construction Date of Certain Project Entitlements

Dear Jim:

RWE Clean Energy, LLC (“RWE”), successor-in-interest to Consolidated Edison Development, Inc. (“CED”), and its subsidiaries, including CED Wistaria Solar 2, LLC (“CED Wistaria 2”), is looking forward to continuing to work with you and the County of Imperial (“County”) during the ongoing development of the CED Wistaria Solar Project (formerly known as the Wistaria Ranch Solar Energy Center) (the “Project”) in accordance with the previously approved Project entitlements, including, but not limited to, the conditional use permits (“CUPs”) and development agreement as entered into with the County on December 30, 2014, effective as of February 26, 2015 and recorded August 10, 2015 in the County Recorder’s Office as Document No. 2015017224 (“Development Agreement”).

As you may remember, in 2020, CED has assigned certain Project-related interests to CED Wistaria 2 for development of “Phase 2” of the Project, including assignment of the Development Agreement, in part, and CUPs 13-0038 through 13-0046 and 13-0048 through 13-0049, in whole.

Pursuant to Section 6.1 of the Development Agreement and Section G-6 of the CUPs, development related to any of the CUPs must be commenced by the tenth (10th) anniversary of the effective date of the Development Agreement – or February 26, 2025. This correspondence is intended to request an extension of this deadline for the following Conditional Use Permits and Variances via an amendment to the relevant CUPs and Development Agreement, in accordance with the relevant Project entitlements and County of Imperial Code of Ordinances.

1. CUP 13-0038 & V 13-0004;
2. CUP 13-0039 & V 13-0005;
3. CUP 13-0040 & V 13-0006;
4. CUP 13-0041 & V 13-0007;
5. CUP 13-0042 & V 13-0008;
6. CUP 13-0043 & V 13-0009;
7. CUP 13-0044 & V 13-0010;
8. CUP 13-0045 & V 13-0011;
9. CUP 13-0046 & V 13-0012;
10. CUP 13-0048 & V 13-0014;
11. CUP 13-0049 & V 13-0015;



Page 2

RWE would like to schedule a meeting with your office in order to formally initiate this process. Please let us know your availability in December 2023 to accommodate such a meeting.

Thank you for your time and attention to this matter. Please do not hesitate to contact me with any questions or concerns related to this request.

Sincerely,

A handwritten signature in black ink, reading "Cristina Gispert", is written over a horizontal line.

Cristina Gispert

Director, Utility-Scale Development Region West

RWE Clean Energy

101 West Broadway, Suite 1120, San Diego, CA 92101

Mobile: (619) 609-1803

E-mail: Cristina.Gispert@rwe.com

RWE Clean Energy, LLC

101 West Broadway
Suite 1120
San Diego, CA 92101
USA

T +1-914-286-7700
www.rwe.com

Attachment E
CEO Letter

COUNTY EXECUTIVE OFFICE

Miguel Figueroa
County Executive Officer
miguelfigueroa@co.imperial.ca.us
www.co.imperial.ca.us



County Administration Center
940 Main Street, Suite 208
El Centro, CA 92243
Tel: 442-265-1001
Fax: 442-265-1010

February 6, 2025

Jim Minnick
Planning & Development Services Director
County of Imperial
801 Main St.
El Centro, CA 92243

Subject: Wistaria Ranch II Development Agreement

The Executive Office is providing formal notice that the proposed Wistaria Ranch II Development Agreement time extension draft document, which includes the negotiated points, has been substantially completed, allowing the Planning Director to deem the application complete for processing and make the draft DA available for public viewing. That said minor additional work is required to finalize the agreement.

The Executive Office is committed to collaborating closely with the developer, RWE Clean Energy, to address these outstanding matters and finalize the Development Agreement. Our goal is to bring the agreement to a point where it aligns with County requirements and is ready for approval by the Board of Supervisors.

We value the Planning Department's support and recognize the significance of this project. Should you have any questions about the Development Agreement please do not hesitate to contact the Executive Office.

Thank you for your attention and continued assistance on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Figueroa".

Miguel Figueroa
County Executive Officer