

Recording Requested By:

County of Merced

When Recorded Mail to:

County of Merced
Department of Community and
Economic Development
2222 M Street, 2nd Floor
Merced, CA 95340

(Above for Recorder's Use Only)

**Wright Solar PV Project
SOLAR BENEFITS AGREEMENT
(Conditional Use Permit No. CUP 12-017)**

This Solar Benefits Agreement, hereinafter "Agreement", a community benefits agreement, is made on and shall become effective this _____ day of _____, 2015, (the "Effective Date") by and between County of Merced ("County") a political subdivision of the State of California, and Wright Solar Park, LLC, a Delaware limited liability company (the "Applicant"). County and Applicant are from time to time hereinafter referred to as the "Parties".

Recitals

Whereas, the state of California has mandated that 33 percent of the total electricity sold to retail customers by December 31, 2020 come from renewable energy resources and 75 percent of all such renewable energy resources must come from in-state resources by 2017; and,

Whereas, County seeks to assist the State of California in meeting its renewable energy objectives in the years to come; and,

Whereas, the Merced County Board of Supervisors, through its 2013 Merced County General Plan, supports the development of renewable energy projects within the County, provided that economic, employment and community concerns are considered and addressed; and

Whereas, on November 7, 2012, the Applicant submitted an application to develop a 200 megawatt solar PV facility on 2,732 acres that is under full site control by the Applicant (the "Project"); and,

Whereas, Wright Solar Park, LLC, as the Project applicant, is the entity that will control, manage and operate the Project in accordance with the terms and conditions of the Conditional Use Permit Application No. CUP-12-017 (the "Project CUP"); and,

Whereas, the land subject to this Agreement is located in western Unincorporated Merced County and includes parcel numbers APN 088-020-003, 088-020-002, 078-200-081, 078-200-082, 078-200-083, 088-020-038, 078-200-028, 078-200-030, 078-200-027, 088-020-040, 088-020-041, 088-020-027, 078-200-026 and is described as set forth in Exhibit A, Legal Description (hereinafter "Project Property"); and,

Whereas, Parties in good faith believe economic benefits will result from the Project in the form of increased economic output, increased property taxes and sales and use taxes, and wages and benefits during construction and operation of the Project; and

Whereas, Parties intend for this Agreement to supplement the anticipated increased economic output, increased property taxes and sales and use taxes, and wages and benefits by providing specified additional economic benefits for local communities throughout and within Merced County; and,

Whereas, Applicant and County voluntarily enter into the Solar Benefits Agreements to provide for a concerted and coordinated effort to enhance the benefits of the Project to local communities throughout Merced County;

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, Applicant and County do hereby agree as follows:

SPECIFIC TERMS

COMMUNITY BENEFITS

Applicant shall take the following actions as a condition to proceeding with the Wright Solar Park pursuant to the CUP, which Parties agree will provide economic benefits throughout Merced County. Such benefits may include but are not limited to job creation, economic development, and enhancement to the quality of life in neighboring communities.

1. Sales Tax

The Applicant shall act in good faith and use commercially reasonable efforts to ensure the sales and use taxes associated with the construction of the Project occur in the unincorporated area of Merced County. The Applicant shall also use commercially reasonable efforts to direct its contractors and subcontractors to have sales and use taxes associated with Project construction occur in the unincorporated area of Merced County. The WSP Economic Impact Analysis forecasts between \$4.2 and \$6.1 M in sales tax will be generated by the project for the County. The Wright Solar Park will provide a bonded guarantee of \$4.12 (80% of mean) as a minimum for this revenue stream.

Parties shall, within (90) days of the Effective Date or prior to the County's issuance of the first building permit for the Project, whichever is earlier, enter into a subsequent agreement setting forth specific terms and mechanisms by which to implement the Applicant's commitment to have construction related sales and use taxes within the unincorporated area of Merced County ("Implementation Plan") in the event the Project proceeds to construction.

The Implementation Plan shall require, at a minimum, that prior to the County's issuance of the first building permit for the Project, the Applicant shall obtain a street address within the unincorporated portion of Merced County for acquisition, purchasing, and billing purposes and registering this address with the State Board of Equalization.

2. Public Service Costs

To support cost recovery from public service impact, Applicant shall pay to County, on annual basis, a payment to the County's General Fund ("General Fund Payment") equaling Twenty Five Thousand Dollars and no cents (\$25,000.00) per year for twenty years commencing the same calendar year as the issuance of the first building permit by the County. If the project is constructed with a Lithium-Ion Battery Energy Storage System, the annual payment shall increase to Thirty Thousand Dollar and no cents (\$30,000).

The General Fund Payment shall be used by County to offset any and all impacts to County services including, but not limited to, public safety services provided by the County Sheriff and County Fire Department.

3. Local Recruitment for Employment

The Community Benefits agreement shall include a local bidders/suppliers preference. The developers/owners shall provide for local preference - Firms and individuals whose primary place of business is located within (or residing in) Merced County - as follows:

- All contracts for construction and operation goods and services shall be advertised within Merced County
- Project labor shall be recruited from Merced County to the maximum extent feasible. This includes placement and wording of advertisements, agreements with labor unions and agreements with other labor contractors.
- The owner of the WSP facility shall open and staff a permanent business office in Santa Nella. The permanent business office may be located at the project location.

4. Community Beautification

The owner of the WSP facility shall enroll in the "Adopt a Highway" program for Billy Wright Road

GENERAL PROVISIONS

5. INDEMNITY

The Applicant hereby agrees that is has the contracted duty pursuant to this Agreement (hereinafter "the duty"), and as such does hereby agree, to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees and agents from and against any and all claims, petitions, demands, liability, judgments, awards, interest, reasonable attorney's fees, costs, expert's fees, and expenses of whatsoever kind or nature (the "Losses"), at any time arising out of or in any way connected with the Applicant's performance of this Agreement with respect to the Project, whether in tort, contract, writ of mandamus, or otherwise, with respect to any Losses that result primarily from the willful misconduct or negligent conduct of any kind, on the part of the Applicant, its agents, subcontractors, employees, and officers.

The duty shall include, but not be limied to, claims petitions, or the like for bodily injury, property damage, personla injury, contractual damages, writ of mandamus, or otherwise allegedd to be caused to any person or entity including, but not limited to employees, agents, subcontractors and officers of the Applicant.

The Applicant's liability for indemnity under this Agreement shall not apply with respect to any allegation, claim of liability, or petition, except in circumstances found by a jury or judge to be the primary and legal result of the gross negligence or willful misconduct of the County, its Board of Supervisors, officers, employees and agents. This clause shall not be limited to any and all claims, petitions, demands, liability, judgments, awards, interest, reasonable attorney's fees, costs, reasonable expert's fees and reasonable expenses of whatsoever nature, that may arise during the term of this Agreement but shall also apply to all such claims and the like after the term of this Agreement for example, arising from land use and environmental law actions, or meeting notice law actions, brought against the County following the Applicant's approval or modification.

6. APPLICABLE LAW; VENUE

The Parties agree that this Agreement and all documents issued or executed pursuant to this Agreement as well as the rights and obligations of the Parties hereunder are subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance.

Notwithstanding any other provision of this Agreement, any disputes concerning any question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Merced County, unless the Parties agree otherwise or are otherwise required by law.

7. NOTICES

All notices, requests, demands, or other communications under this Agreement shall be in writing. Notice shall sufficiently be given for all purposes as follows:

A. Personal Delivery

When personal delivery to the recipient, notice is effective upon delivery.

B. First Class Mail

When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.

C. Certified Mail

When mailed by certified mail, return receipt requested, notice is effective upon receipt, if delivery is confirmed by return receipt.

D. Overnight Delivery

When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective upon delivery, if delivery is confirmed by delivery service.

E. Facsimile Transmission

When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective upon receipt, provided that: a) a duplicate copy of the notice is promptly given by first class mail or certified mail or overnight delivery, or b) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be deemed received on the next business day if received after 5:00 PM (recipient's time) or a non-business day.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

Information for notice to the parties to this Agreement at the time of endorsement of this Agreement is as follows:

COUNTY:
Merced County Community &
Economic Development Department
2222 M Street, 2nd Floor
Merced, CA 95340
Tel: (209) 385-7654

Attn: Mark J. Henderickson
Director

With A Copy To:
James N. Fincher
Merced County Counsel
2222 M Street, Room 309
Merced, CA 95340
Tel: (209) 385-7564
Fax: (209) 726-1337

WRIGHT SOLAR:
Tom Fitzgerald
Wright Solar Park, LLC
1777 Borel Place, Suite # 102
San Mateo, CA 94402
Tel: (650) 539-3380

8. BREACH OF CONTRACT

Upon breach of this Agreement by either Party, the non-breaching party shall have all remedies available to it both in equity and/ or at law.

9. RECORDS

The Applicant shall maintain full and accurate records with respect to all matters covered under this Agreement. To the extent permitted by law, upon at least two (2) business days' prior written notice, County shall have access during reasonable business hours until the expiration of four (4) years after the furnishing of services to such records, and to the right to examine and audit the same and to make transcripts therefrom, and to inspect all data, documents, proceedings, and activities pertaining directly to this Agreement.

To the extent permitted by law, the Applicant shall furnish County such periodic reports as County may reasonably request pertaining to the work undertaken pursuant to this Agreement. The costs and obligations incurred or to be incurred in connection with the preparation of such reports shall be borne by the Applicant.

10. SUCCESSORS IN INTEREST

All the terms, covenant, and conditions of this Agreement shall be binding and in full force and effect upon any successors in interest and assigns of the Parties hereto. This paragraph shall not be deemed as a waiver of any of the conditions against assignment set forth herein.

11. CAPTIONS

The captions of each paragraph in this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect it.

12. SEVERABILITY

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected unless explicitly determined by the court.

13. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original. The Agreement shall be deemed executed when it has been signed by all Parties.

14. LIMITED AFFECT OF WAIVER

No waiver by either party of any default, breach or condition precedent shall be valid unless made in writing and signed by the Parties hereto. No oral waiver of any default, breach or condition precedent shall be binding onto any of the Parties hereto. Waiver by either party of any default, breach or condition precedent shall be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

14. HEADINGS

Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

15. EXHIBITS AND RECITALS

The recitals and the exhibits to this Agreement are fully incorporated into and are intergral parts of this Agreement.

16. ENTIRE AGREEMENT REPRESENTED

This Agreement represents the entire Agreement between the Parties as to its subject matter and no prior oral or written understanding shall be of any force or effect.

17. COPIES OF THE AGREEMENT

This Agreement is entered in counterparts, each of which shall be deemed a duplicate of the original.

[SIGNATURE PAGES FOLLOW]

THE PARTIES hereto, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

EXECUTION OF AGREEMENT

IN WITNESS WHEREOF, COUNTY has executed this Agreement as of _____ day of _____ 2015.

COUNTY OF MERCED

By: _____

John Pedrozo, Chairperson, Merced County Board of Supervisors

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF MERCED) ss.
)

On _____, 2015, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

WRIGHT SOLAR PARK, LLC
By: Frontier Renewables LLC
Its: Manager

By: _____
Name and Title:
Date:

IN WITNESS WHEREOF, Wright Solar Park LLC has executed this agreement as of this _____
day of _____, 2015.

WRIGHT SOLAR PARK, LLC
By: Frontier Renewables LLC
Its: Manager

By: _____
Name and Title:
Date:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF MERCED) ss.
)

On _____, 2015, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

APPROVED AS TO LEGAL FORM:
MERCED COUNTY COUNSEL

By: _____
JAMES N. FINCHER

SOLAR BENEFITS AGREEMENT

ATTACHMENT A
PROPERTY DESCRIPTION

Assessor's Parcel Numbers for "Wright Solar Park Project" (CUP12-017):

088-020-003

088-020-002

078-200-081

078-200-082

078-200-083

088-020-038

078-200-028

078-200-030

078-200-027

088-020-040

088-020-041

088-020-027

078-200-026