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(661) 392-5500 • FAX (661) 392-5585

DATE: September 16, 2021
TO: SJVUAPCD Governing Board
FROM: Samir Sheikh, Executive Director/APCO
Project Coordinator: Morgan Lambert



RE: **ITEM NUMBER 8: APPROVE VOLUNTARY
EMISSION REDUCTION AGREEMENT WITH
FIFTH STANDARD SOLAR PV, LLC TO
MITIGATE AIR QUALITY IMPACTS**

RECOMMENDATIONS:

1. Approve and authorize the Chair to sign the attached Voluntary Emission Reduction Agreement (VERA) with Fifth Standard Solar PV, LLC to receive funds in the amount up to \$573,012 to mitigate air quality impacts from the Fifth Standard Solar Complex (Project) located in Fresno County.
2. Authorize staff to identify, fund, and manage emission reduction projects to mitigate air quality impacts from the Project.

BACKGROUND:

Since 2005, the District has entered into 47 VERAs with project proponents to mitigate air quality impacts of their projects. These VERAs to date have generated over \$108 million that the District has invested in local emission reduction projects, achieving total emission reductions of over 10,935 tons of Nitrogen Oxides (NOx), 1,068 tons Volatile Organic Compounds (VOC)/Reactive Organic Gases (ROG), and 1,236 tons of Particulate Matter 10 microns or less in size (PM10). The Project proposed by Fifth Standard Solar PV, LLC consists of the construction and operation of a 1,267-acre solar complex including: 1) 150-MW PV solar facility, 2) 137-MW storage capacity battery storage facility, and 3) an on-site substation and connection to the existing PG&E Gates Substation. The County of Fresno (County) served as Lead Agency for the Project under the California Environmental Quality

Act (CEQA), and prepared and Environmental Impact Report (EIR) for the purposes of satisfying CEQA requirements.

The purpose of this item is to seek your Board's approval of the agreement by Fifth Standard Solar PV, LLC to achieve the required mitigation. The agreement before you today is similar to previous agreements approved by your Board.

ROLE OF VOLUNTARY EMISSION REDUCTION AGREEMENTS:

In 2005, at the urging of private developers, the District in collaboration with Kern County developed an innovative CEQA mitigation measure known as a Voluntary Emission Reduction Agreements or VERA. These agreements are designed to provide developers with enforceable and legally defensible means to quantify and mitigate emission increases beyond emission reductions required by applicable laws and regulations. Approvals of VERAs by your Governing Board, however, do not constitute approval of the underlying development project as the decision rests with the lead agency.

A VERA is a mitigation measure by which the project proponent provides pound-for-pound mitigation of air emissions increases through a process that funds and implements emission reduction projects administered through the District's emission reduction incentive grant programs. A VERA can be implemented to address air quality impacts from both construction and operational phases of a project. The emission reductions secured through VERAs are "surplus" of existing regulations, achieving reductions earlier or beyond those required by regulations.

Dollars provided by the project proponent are reinvested in the Valley to reduce emissions. Utilizing the District's highly successful grant administration program, the funds generated there will be awarded to Valley businesses, residents, and municipalities to generate real quantifiable reductions in emissions, generally with funding priority for emissions reductions near the location of the emissions increases addressed by the VERA. The following are some examples of how these funds will be utilized to reduce air pollution:

- Grants to Valley businesses to electrify or replace existing diesel-powered off-road equipment and agricultural tractors
- Grants to Valley businesses to replace old trucks with new low-emission trucks
- Grants to Valley school districts to replace older and high-polluting school buses
- Grants to Valley municipalities to replace older transit buses and other vehicles
- Grants to Valley residents to purchase cleaner personal vehicles
- Grants to Valley residents to repair older high polluting vehicles
- Grants to Valley residents to replace fireplaces and non-certified wood burning stoves with natural gas inserts or clean burning EPA-certified units

Over the years, the District has built a reputation for excellence in the implementation of these programs, as highlighted in multiple audits by state agencies that commended the District's incentive programs for their efficiency and effectiveness. The District's incentive programs have invested over \$3.8 billion in public and private funding for clean air projects reducing over 199,000 tons of emissions.

MITIGATION OF PROJECT CONSTRUCTION CRITERIA POLLUTANT EMISSIONS:

The County approved the EIR associated with this Project, as discussed above, which commits Fifth Standard Solar PV, LLC to mitigate the Project's construction-related emissions of criteria pollutant emissions (ROG, NOx and PM10) to below the CEQA significance levels. Given the District's experience in administering grants for emission reduction projects, with adequate funding, the District can bring about sufficient emission reductions from existing sources of emissions to fully and permanently mitigate the Projects criteria pollutant emission to below the CEQA significance levels.

As a result of this CEQA process, the agreement requires payment of up to \$573,012 to the District to mitigate up to 1.9 tons of ROG, 31.2 tons of NOx, and 26.8 tons of PM10 expected to result from the Project. All mitigation funds collected will be used for emission reduction projects. The emission reductions will be in place contemporaneously with construction of the project, providing direct air quality benefits in the San Joaquin Valley. The District will establish a separate budgetary account for these funds, and will provide tracking and status reports documenting fund expenditures and the emissions reductions achieved for the Project.

FISCAL IMPACT:

Under the terms of the agreement, Fifth Standard Solar PV, LLC is to pay the District up to \$573,012 in mitigation funds. The District's 2021-22 Budget contains adequate revenue estimates and appropriations to facilitate the receipt of mitigation funds from Fifth Standard Solar PV, LLC and for expenditures of those funds in accordance with the VERA.

Attachment: Voluntary Emission Reduction Agreement No. 20210295 (20 pages)

San Joaquin Valley Unified Air Pollution Control District
Meeting of the Governing Board
September 16, 2021

APPROVE VOLUNTARY
EMISSION REDUCTION AGREEMENT WITH FIFTH STANDARD SOLAR PV,
LLC TO MITIGATE AIR QUALITY IMPACTS

Attachment:

VOLUNTARY EMISSION REDUCTION AGREEMENT NO. 20210295

(20 pages)

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VOLUNTARY EMISSION REDUCTION AGREEMENT 20210295

This Voluntary Emission Reduction Agreement (“Agreement”) is entered into as of September 16, 2021, by and between Fifth Standard Solar PV, LLC (a subsidiary of RWE Solar Development, LLC, and collectively, “Developer”), and the SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, an air pollution control district formed pursuant to California Health and Safety Code section 40150, et seq. (“District”).

RECITALS

WHEREAS, Developer proposes to develop the Fifth Standard Solar Complex (“Project”), which includes construction and operation of a 1,267-acre solar complex including a 150-MW PV solar facility; an up to 137-MW storage capacity battery storage facility; an on-site substation, and connection to the existing PG&E Gates Substation, located in unincorporated Fresno County, California, as more particularly described in Exhibit A attached hereto; and

WHEREAS, the Project is subject to the California Environmental Quality Act (“CEQA”) codified at California Public Resources Code section 21000, et seq., and the Fresno County Planning Commission has certified an Environmental Impact Report (“Environmental Document”) for the Project; and

WHEREAS, the Project incorporates a design feature specified in Exhibit B attached hereto and incorporated herein (“Emission Reduction Design Feature”), in order to reduce Project air quality impacts within the geographical boundaries of the District, as depicted in Exhibit C attached hereto and incorporated herein (the “District Boundaries”); and

WHEREAS, without the Emission Reduction Design Feature, the Project would cause significant NOx emission impacts on air quality within the District Boundaries; and

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1 **WHEREAS**, the Environmental Document identifies this Agreement as a
2 mitigation measure which was adopted and imposed as a condition of approval of the
3 Project; and

4 **WHEREAS**, Developer desires to comply with all requirements of CEQA,
5 including all requirements relating to the mitigation of air quality impacts arising from or
6 in connection with the Project; and

7 **WHEREAS**, District is an air pollution control district formed by the counties of
8 Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare, pursuant to
9 California Health and Safety Code section 40150, et seq.; and

10 **WHEREAS**, District is responsible for developing and implementing air quality
11 control measures within the District Boundaries, including air quality control measures
12 for stationary sources, transportation sources, and indirect sources; and

13 **WHEREAS**, the District's incentive programs have been developed around
14 several core principles, including cost-effectiveness, integrity, effective program
15 administration, excellent customer service, the efficient use of District resources, fiscal
16 transparency, and public accountability; and

17 **WHEREAS**, the emission reductions to be achieved pursuant to this Agreement
18 shall be achieved through the District's incentive programs through a range of projects
19 which may include involving public agencies, residents, businesses, and technologies
20 (e.g., electrification of stationary internal combustion engines, replacing old heavy-duty
21 trucks with new, cleaner, more efficient heavy-duty trucks, and replacement of old farm
22 tractors); and

23 **WHEREAS**, the District's incentive programs are regularly audited by
24 independent outside agencies including professional accountancy corporations on
25 behalf of the federal government, the California Air Resources Board (ARB), the
26 California Department of Finance and the California Bureau of State Audits; and

27 **WHEREAS**, District has determined that with appropriate funding, District can
28 achieve reductions of emissions through its incentive programs from certain projects in

1 types and in sufficient quantities to fully mitigate criteria pollutant construction emissions
2 from the Project as presented in Section 1, below (Full Mitigation of Project Construction
3 Criteria Pollutant Emissions); and

4 **WHEREAS**, the District implements a CEQA significance threshold of 10 tons per
5 year of NOx, 10 tons per year of VOC/ROG, and 15 tons per year of PM10; and

6 **WHEREAS**, Developer and District desire to enter into this Agreement in order to
7 fully mitigate the criteria pollutant construction emissions and result in emission
8 reductions of oxides of nitrogen (“NOx”), volatile organic compounds (“VOC”)/reactive
9 organic gases (“ROG”), and particulate matter 10 microns or less in diameter (“PM10”)
10 (collectively, “Criteria Pollutant Emissions”) of the Project; and

11 **AGREEMENT**

12 **NOW THEREFORE**, in exchange of the mutual covenants herein contained,
13 Developer and District hereby agree as follows:

14 **1. Full Mitigation of Project Construction Criteria Pollutant Emissions**

15 As provided in Section 2 (Mitigation of Project Emissions), Developer shall fully
16 mitigate the Project Construction Criteria Pollutant Emissions for the life of the Project,
17 by achieving surplus, quantifiable and enforceable in NOx, VOC/ROG, and PM10, to the
18 extent specified in the certified Environmental Document. Estimates for Project
19 Construction Criteria Pollutant Emissions are specified in Exhibit D attached hereto.

20 “Surplus” emission reductions are reductions that are not otherwise required by
21 existing laws or regulations. The determination of whether emission reductions are
22 surplus shall be performed by District through its incentive programs.

23 For the purpose of this Agreement, full mitigation to means the Emissions
24 Reductions achieved equal, or is greater than, the sum of all Project Construction Criteria
25 Pollutant Emissions.

26 **2. Mitigation of Project Emissions**

27 Developer shall fully mitigate the Criteria Pollutant Emissions pursuant to Section
28 1 (Full Mitigation of Project Construction Criteria Pollutant Emissions) above by providing

1 sufficient funds to mitigate the Project Construction Criteria Pollutant Emissions (“Air
2 Quality Mitigation Funds”) through the District’s incentive programs. District shall credit
3 Developer for all Project Construction Criteria Pollutant Emission reductions achieved
4 under this Agreement.

5 3. Timing of Air Quality Mitigation Funds

6 The Air Quality Mitigation Funds shall be provided to District before occurrence of
7 the first Project-related construction emissions generating activity for the Project (i.e.,
8 prior to commencement of construction activity).

9 4. Construction Emission Reduction Cost per Ton

10 Developer shall advance to District a monetary sum equal to District’s cost per
11 ton as set forth in Table 1 below (Emission Reduction Cost Schedule) multiplied by the
12 number of tons of emission reductions to be achieved (Air Quality Mitigation Funds), plus
13 an administrative cost of four (4) percent.

14 **Table 1 Emission Reduction Cost Schedule**

15 Criteria Pollutants	Construction \$/ton
16 NOx or VOC/ROG	\$9,350
17 PM10	\$9,011

18 5. Use of Air Quality Mitigation Funds

19 5.1. Funding Agreements

20 Upon District’s receipt of Air Quality Mitigation Funds, District shall (1) enter into
21 one or more funding agreements with owners and/or operators of the pollution source
22 equipment as identified by the District from its incentive programs (“Funding
23 Agreements”), within one hundred eighty (180) days of receiving Air Quality Mitigation
24 Funds; (2) determine the types and quantities of permanent reductions in emissions
25 which would be realized; and (3) perform the determination of surplus emissions
26 reductions for each Funding Agreement.
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1 **5.2. Insufficient Emission Reductions with Funds Provided**

2 In the event District is unable to achieve the required reductions to mitigate the
3 Project Construction Criteria Pollutant Emissions with the Air Quality Mitigation Funds
4 provided by Developer, District shall provide Developer a written statement of the amount
5 of emission reductions that have been achieved to date pursuant to this Agreement.
6 Within ninety (90) days of receiving such written statement, Developer shall submit to
7 District additional Air Quality Mitigation Funds in accordance with Section 4 (Construction
8 Emission Reduction Cost per Ton), thereby ensuring the required reductions to mitigate
9 the Project Construction Criteria Pollutant Emissions.

10 **6. Excess Emission Reductions**

11 Developer shall be credited with all emission reductions achieved by District
12 through this Agreement that exceed the amount of required emission reductions for the
13 Project (“Excess Emission Reductions”).

14 Developer may transfer surplus Excess Emission Reductions achieved under
15 this Agreement for this Project to other similar voluntary emission reduction
16 agreements entered into between the District and Developer for projects within the San
17 Joaquin Valley. Developer must provide District a written request, and be granted
18 District approval (which approval shall not be unreasonably withheld) prior to any such
19 transfers.

20 Developer shall have two years from the date District notifies Developer of Excess
21 Emission Reductions to provide District with a written request for the transfer of Excess
22 Emission Reductions, and after such time Developer’s transfer rights shall be deemed
23 waived.

24 **7. Refund of Air Quality Mitigation Funds**

25 Upon verification that Project Construction Criteria Pollutant Emissions have been
26 mitigated, District shall refund to Developer any unused Air Quality Mitigation Funds
27 within sixty (60) days.

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1 **8. District Rule 9510 (Indirect Source Review)**

2 **8.1. District Rule 9510 Requirements**

3 Developer acknowledges that the Project is subject to all applicable provisions of
4 District Rule 9510 (Indirect Source Review), that are in effect at the time of submitting
5 an Air Impact Assessment Application in accordance with District Rule 9510
6 requirements. District acknowledges that to the extent that mitigation provided under
7 this Agreement equals or exceeds mitigation that would otherwise be achieved through
8 compliance with District Rule 9510 requirements, Developer shall be considered to be in
9 compliance with District Rule 9510.

10 **8.2. District Rule 9510 Equivalency**

11 As identified in the certified Environmental Document, the Project Construction
12 Criteria Pollutant Emissions already incorporates the emission reductions to be achieved
13 for compliance with District Rule 9510. As such, the Project Construction Criteria
14 Pollutant Emissions required to be mitigated pursuant to this Agreement, are the
15 remaining balance of project related emissions identified in the certified Environmental
16 Document after incorporating compliance with District Rule 9510 and exceeding the
17 District CEQA significance threshold.

18 **9. District’s Obligations**

19 **9.1. Acknowledgement Regarding Mitigation**

20 Upon successful mitigation of Project Construction Criteria Pollutant Emissions
21 identified pursuant to Section 1 (Mitigation of Project Construction Criteria Pollutant
22 Emissions), District shall promptly verify in writing to Developer and to the CEQA lead
23 agency (“Lead Agency”) that the Project related impacts on air quality have been
24 mitigated as required under this Agreement. For purposes of this Agreement, Developer
25 shall be deemed to have fulfilled its obligations under the Agreement when District
26 provides Developer and Lead Agency with such written verification.

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1 **9.2. Oversight of Funding Agreements**

2 District shall ensure that the owners/operators of equipment subject to Funding
3 Agreements perform all obligations to be performed on the part of such parties under
4 said Funding Agreements.

5 **9.3. Oversight of Air Quality Mitigation Monitoring Plan**

6 Upon request of the Lead Agency for the Project, District shall oversee that portion
7 of the mitigation monitoring plan adopted by the Lead Agency for the Project which
8 relates to the mitigation brought about by Section 1 (Mitigation of Project Construction
9 Criteria Pollutant Emissions) of this Agreement. Alternatively, upon request of the Lead
10 Agency, District shall cooperate with the Lead Agency in the oversight of that portion of
11 the mitigation monitoring plan adopted by the Lead Agency for the Project which
12 corresponds to the Mitigation Measures being implemented pursuant to this Agreement.

13 **9.4. Documentation, Record Keeping and Monitoring**

14 District shall document, keep adequate records on, and monitor the emission
15 reductions brought about as a result of this Agreement, and shall, upon written request
16 by Developer or by the Lead Agency for the Project, provide Developer or Lead Agency
17 written reports verifying achieved emission reductions and/or emission reductions being
18 brought about to mitigate Project related impacts on air quality.

19 **9.5. Achievement of Emission Reductions**

20 For and in exchange of Developer’s payment of Air Quality Mitigation Funds under
21 this Agreement, District shall ensure, by way of entering into, funding and enforcing the
22 Funding Agreements, that the Project achieves the required emission reductions to the
23 extent specified in Exhibit D.

24 **10. Subsequent Litigation, Legislation and/or Administrative Action /**
25 **Credit to Developer**

26 In the event that despite this Agreement, Developer is required as a result of a
27 final judgment or District Approved Settlement (as defined below) in any third party
28 litigation, to pay monies in addition to the monies to be paid by Applicant pursuant to

1 Section 2 (Mitigation of Project Emissions) above, then District shall acknowledge and
2 credit Developer with the emission reductions achieved pursuant to this Agreement and
3 any additional emission reductions achieved to mitigate the Project related impacts on
4 air quality that will result from Developer's payment of such additional monies. For
5 purposes of this Section, a "District Approved Settlement" shall mean a settlement of a
6 lawsuit filed pursuant to CEQA or other applicable environmental law which (i) provides
7 for Developer's payment of monies in exchange for a dismissal of such lawsuit, (ii)
8 provides for the use of such monies by the petitioner in such lawsuit in such a manner
9 as to mitigate adverse air quality impacts of the Project, and (iii) is approved in writing by
10 District. For the avoidance of doubt, Developer shall be permitted to participate in any
11 negotiations of a District Approved Settlement that impacts either the Project or the
12 Developer. The District shall have no authority to commit the Developer's Air Quality
13 Mitigation Funds or other Developer monies in any settlement of a third party lawsuit
14 without the Developer's consent.

15 **11. Term of Agreement**

16 This Agreement shall be effective upon the date first written above, and shall
17 terminate upon District's meeting its obligation to implement Funding Agreements that
18 provide necessary emissions reductions to mitigate the Project Construction Criteria
19 Pollutant Emissions, as evidenced by District's issuance of the written verification
20 described in Section 9.1 (Acknowledgement Regarding Mitigation) of this Agreement.
21 Developer may, at any time by written notice to District, terminate this Agreement,
22 whereupon, (i) District shall acknowledge in writing to the Lead Agency that Developer
23 has mitigated Project Construction Criteria Pollutant Emissions to the extent and in the
24 types and quantities brought about by Funding Agreements and Mitigation Measures, (ii)
25 District shall refund to Developer any unused portion of Developer's Air Quality Mitigation
26 Funds less any unpaid administrative costs incurred; and (iii) neither Developer nor
27 District shall have any further rights or obligations under this Agreement except as
28 expressly provided. District's obligations to oversee implementation of Funding

1 Agreements and to ensure that required emission reductions are achieved, shall remain
2 effective for as long as necessary to ensure that the anticipated emission reductions
3 continue to be achieved to the extent specified herein.

4 12. **Representations, Covenants and Warranties**

5 A. **Developer's Representations, Covenants and Warranties.**

6 Developer represents, covenants and warrants to District, as of the date of this
7 Agreement, as follows:

8 i. The undersigned representatives of Developer are duly authorized
9 to execute, deliver and perform this Agreement, and upon Developer's execution and
10 delivery of this Agreement, this Agreement will have been duly authorized by Developer.

11 ii. Upon execution and delivery of this Agreement by Developer,
12 Developer's obligations under this Agreement shall be legal, valid and binding
13 obligations of Developer, duly enforceable at law and in equity in accordance with the
14 terms and conditions of this Agreement.

15 iii. There is no lawsuit, legal action, arbitration, legal or administrative
16 proceeding, legislative, quasi-legislative or administrative action or claim existing,
17 pending, threatened or anticipated, as related to the Project, which would render all or
18 any portion of this Agreement invalid, void or unenforceable in accordance with the terms
19 and conditions thereof.

20 iv. Other than the execution and delivery of this Agreement by the
21 undersigned representatives of Developer, there are no approvals, consents,
22 confirmations, proceedings, or other actions required by Developer or any third party,
23 entity or agency in order to enter into and carry out the terms, conditions and intent of
24 the parties with respect to this Agreement, except as required to enter Funding
25 Agreements.

26 B. **District's Representations, Covenants and Warranties**

27 District represents, covenants and warrants to Developer, as of the date of this
28 Agreement, as follows:

1 i. The undersigned representatives of District are duly authorized to
2 execute, deliver and perform this Agreement, and upon District's execution and delivery
3 of this Agreement, this Agreement will have been duly authorized by District.

4 ii. Upon execution and delivery of this Agreement by District, District's
5 obligations under this Agreement shall be legal, valid and binding obligations of District,
6 duly enforceable at law and in equity in accordance with the terms and conditions of this
7 Agreement.

8 iii. There is no lawsuit, legal action, arbitration, legal or administrative
9 proceeding, legislative, quasi-legislative or administrative action or claim existing,
10 pending, threatened or anticipated which would render all or any portion of this
11 Agreement invalid, void or unenforceable in accordance with the terms and conditions
12 thereof.

13 iv. Other than the execution and delivery of this Agreement by the
14 undersigned representatives of District, there are no approvals, consents, confirmations,
15 proceedings, or other actions required by District or any third party, entity or agency in
16 order to enter into and carry out the terms, conditions and intent of the parties with
17 respect to this Agreement, except as required to enter Funding Agreements

18 v. The Air Quality Mitigation Funds paid by Developer under this
19 Agreement shall be sufficient to ensure that the emission reduction contemplated by this
20 Agreement shall occur, and District shall utilize such monies in such a manner as to
21 ensure that such emission reduction shall occur.

22 vi. Upon the approval of this Agreement by the District governing
23 board, the Air Pollution Control Officer of District, or equivalent representative, or a
24 delegee of such officer, shall have the authority to approve, deliver, verify, enter into,
25 acknowledge and/or accept any communication, notice, notification, verification,
26 agreement and/or other document to be issued or entered into by District under the terms
27 and conditions of this Agreement, without further approval of the governing board of
28 District.

1 **13. Indemnification**

2 Developer agrees to indemnify, defend and hold harmless District for, from and in
3 connection with any third party claims, losses and/or liabilities arising from or in
4 connection with District's performance of this Agreement, excluding only such claims,
5 losses and/or liabilities which result from or are in connection with District's willful
6 misconduct, negligence, act or omission.

7 **14. Inurement**

8 Unless terminated as provided in Section 11 (Term of Agreement), Developer's
9 rights and obligations under this Agreement, or applicable portions thereof, shall run with
10 the land encompassed by the Project, and shall inure to the benefit of and be binding
11 upon the heirs, successors and assigns of Developer who take title to such lands or
12 applicable portions thereof. Upon Developer's conveyance of all or any portion of the
13 lands encompassed by the Project, the rights and obligations of Developer under this
14 Agreement shall, to the extent applicable to the lands so conveyed, be transferred to the
15 transferee thereof, and Developer shall thereupon be released by District from, all
16 obligations and liabilities so assigned, except for such obligations and liabilities arising
17 prior to such transfer.

18 **15. Assignment**

19 Developer shall have the right to assign all or part of its rights and/or obligations
20 under this Agreement with the District's written consent, which shall not be unreasonably
21 withheld. In the event the District does give consent to any such assignment, the District,
22 the third party assignee and Developer shall enter into an amendment and novation of
23 this Agreement which acknowledges the assignment and conforms the various
24 provisions of this Agreement as may be required to be conformed in order to provide to
25 the assignee the rights and benefits of this Agreement as if such assignee and its project
26 were the original party and project contemplated in this Agreement.

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1 **16. Recitals Incorporated**

2 The recitals set forth hereinabove are hereby incorporated into this Agreement
3 and acknowledged, agreed to and adopted by the parties to this Agreement.

4 **17. Further Assurances**

5 Developer and District agree to execute and deliver any documents and/or
6 perform any acts which are reasonably necessary in order to carry out the intent of the
7 parties with respect to this Agreement.

8 **18. No Joint Venture or Partnership**

9 District and Developer agree that nothing contained in this Agreement or in any
10 document executed in connection with this Agreement shall be construed as making
11 District and Developer joint ventures or partners.

12 **19. Notices**

13 Any notices or communications relating to this Agreement shall be given in writing
14 and shall be deemed sufficiently given and served for all purposes when delivered, if (a)
15 in person, (b) by facsimile (with the original delivered by other means set forth in this
16 Section, (c) by generally recognized overnight courier or (d) by United States Mail,
17 certified or registered mail, return receipt requested, postage prepaid, to the respective
18 addresses set forth below, or to such other addresses as the parties may designate from
19 time to time by providing written notice of the change to the other party.

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<p>RWE SOLAR DEVELOPMENT, LLC Matt Stucky 20 California Street, Floor 5 San Francisco, CA 94111 Phone: (415) 278-1080 E-mail: matt.stucky@rwe.com</p> <p>AND</p> <p>RWE Renewables Americas, LLC Attn: Max Friedman and Patricia Sherman Bruce (Fifth Standard Solar, Fresno, CA) 701 Brazos Street, Suite 1400 Austin, Texas 78701 Email: max.friedman@rwe.com and patricia.shermanbruce@rwe.com</p>	<p>DISTRICT Samir Sheikh Executive Director/APCO 1990 E. Gettysburg Ave. Fresno, CA 93726</p>
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20. Entire Agreement

The terms of this Agreement, together with all attached exhibits, are intended by the parties as the complete and final expression of their agreement with respect to such terms and exhibits and may not be contradicted by evidence of any prior or contemporaneous agreement. This Agreement specifically supersedes any prior written or oral agreements between the parties with respect to the subject matter of this Agreement.

21. Amendments and Waivers

No addition to or modification of this Agreement shall be effective unless set forth in writing and signed by the party against whom the addition or modification is sought to be enforced. The party benefited by any condition or obligation may waive the same, but such waiver shall not be enforceable by another party unless made in writing and signed by the waiving party.

22. Invalidity of Provisions

If any provision of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law)

1 any other provision of this Agreement, the application of any such provision under
2 circumstances different from those adjudicated by the court, or the validity or
3 enforceability of this Agreement as a whole. The parties further agree to replace any
4 such invalid, illegal or unenforceable portion with a valid and enforceable provision,
5 which will achieve, to the maximum extent legally possible, the economic, business or
6 other purposes of the invalid, illegal or unenforceable portion.

7 **23. Construction**

8 Unless otherwise indicated, all Section references are to the Section of this
9 Agreement and all references to days are to calendar days. Whenever, under the terms
10 of this Agreement the time for performance of a covenant or condition falls upon a
11 Saturday, Sunday or California state holiday, the time for performance shall be extended
12 to the next business day. The headings used in this Agreement are provided for
13 convenience only and this Agreement shall be interpreted without reference to any
14 headings. Wherever required by the context, the singular shall include the plural and vice
15 versa, and the masculine gender shall include the feminine or neuter genders, or vice
16 versa. This Agreement may be executed in one or more counterparts, each of which
17 shall be deemed an original, but all of which together shall constitute one and the same
18 instrument. The language in all parts of this Agreement shall be construed as a whole
19 in accordance with its fair meaning, and shall not be construed against any party solely
20 by virtue of the fact that such party or its counsel was primarily responsible for its
21 preparation.

22 **24. Governing Law**

23 24.1 The rights and obligations of the parties and the interpretation and
24 performance of this Agreement shall be governed in all respects by the laws of the State
25 of California.

26 24.2 Venue for any action arising out of or relating to this Agreement shall be in
27 Fresno County, California.

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1 **24. No Third-party Beneficiaries**

2 Nothing in this Agreement, express or implied, is intended to confer any rights or
3 remedies under or by reason of this Agreement on any person other than the parties to
4 it and their respective permitted successors and assigns, nor is anything in this
5 Agreement intended to relieve or discharge any obligation of any third person to any
6 party hereto or give any third person any right of subrogation or action over or against
7 any party to this Agreement.

8 **25. Exhibits**

9 The exhibits attached to this Agreement shall be deemed to be a part of this
10 Agreement and are fully incorporated herein by reference.

11 **26. Force Majeure**

12 The time within which any party shall be required to perform under this Agreement
13 shall be extended on a day-per-day basis for each day during which such performance
14 is prevented or delayed by reason of events reasonably outside of the control of the
15 performing party, including, without limitation, acts of God, events of destruction, acts of
16 war, civil insurrection, strikes, shortages, governmental delays, moratoria, legislation,
17 administrative agency or any pending third party challenges or litigation (including
18 without limitation delays during the pendency of such agency challenge or judicial
19 litigation, final judgement, and remedial measures undertaken in furtherance of this or a
20 successor emission reduction program in response to any such challenge or litigation).

21 IN WITNESS WHEREOF, Developer and District have executed this Agreement
22 and agree that it shall be effective as of the date first written above.

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DEVELOPER
Fifth Standard Solar PV, LLC

DocuSigned by:
Edward Shelton
2E7DD840F7FE4C9...

Edward Shelton
Vice President

DISTRICT
**San Joaquin Valley Unified Air
Pollution Control District**

Craig Pedersen
Governing Board Chair

Recommended for approval:
San Joaquin Valley Unified Air Pollution
Control District

Samir Sheikh
Executive Director/APCO

Approved as to legal form:
San Joaquin Valley Unified Air Pollution
Control District

Annette Ballatore
District Counsel

Approved as to accounting form:

Mehri Barati
Director of Administrative Services

For accounting use only:
San Joaquin Valley Unified Air Pollution
Control District
Program: _____
Account No: _____

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EXHIBIT A

DESCRIPTION OF THE PROJECT

Fifth Standard Solar PV, LLC, a Delaware limited liability company (the “Applicant,” being an affiliate of RWE Solar Development, LLC, successor in interest to EC&R Solar Development, LLC), will construct, operate, maintain, and decommission a 150-megawatt (MW) solar photovoltaic (PV) generation facility and an up to 137-MW energy storage facility. The Fifth Standard Solar Facility Project Complex (Project) includes PV electricity-generating facilities, a battery storage facility, and associated infrastructure. The Project is located on several contiguous parcels (project site), totaling approximately 1,265 acres in unincorporated Fresno County. A new generation-tie (gen-tie) line would be constructed to connect the solar and storage components of the proposed project to Pacific Gas and Electric’s (PG&E’s) adjacent Gates Substation (point of interconnect).

The Project includes two separate components, which are summarized here and described below:

- Fifth Standard Solar Facility: a 150-MW PV solar energy generation facility that is anticipated to require up to 1,400 acres of the site. A 230-kilovolt (kV) project gen-tie line would be constructed from the southwest portion of this site to the point of interconnect. The gen-tie line would consist of a 0.3-mile aboveground power line.
- Blackbriar Battery Storage Facility: an up to 137-MW battery storage facility that would be located adjacent to the Fifth Standard Solar Facility and would require less than 5 acres of the site.

The Project would operate year-round to generate electricity from the PV facilities during daylight hours and dispatch additional electricity during either daylight or non-daylight hours, depending on the application of the energy storage portion of the proposed project.

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EXHIBIT B

EMISSION REDUCTION DESIGN FEATURE

The Project proposes the following Project Design Feature (PDF) to reduce ROG, NOx and PM10 emissions during construction of the Project:

<p>Section 4.3 Air Quality - Mitigation Measure AIR-2</p>	<p>MM AIR-2: Voluntary Emission Reduction Agreement (VERA).</p> <p>a. The Developer shall enter into a Voluntary Emission Reduction Agreement (VERA) with the SJVAPCD prior to the issuance of ministerial construction/grading permits or stagger the construction periods for the three facilities to avoid a significant impact. Proof of payment to the SJVAPCD shall be provided prior to issuance of grading permits for construction. If “staggering” of the timing of the construction periods is used to avoid a significant impact, the Developer shall provide documentation to the County prior to the commencement of construction activities to confirm that construction emissions would be reduced to below the applicable significance thresholds.</p> <p>b. Twelve months prior to initiation of decommissioning activities, the Applicant shall prepare additional analysis to determine air quality impacts from the proposed decommissioning activities. If the emissions will exceed the SJVAPCD thresholds of significance, the Applicant shall enter into a new VERA with the SJVAPCD to offset the decommissioning emissions below the thresholds of significance.</p>
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EXHIBIT C
DISTRICT BOUNDARIES

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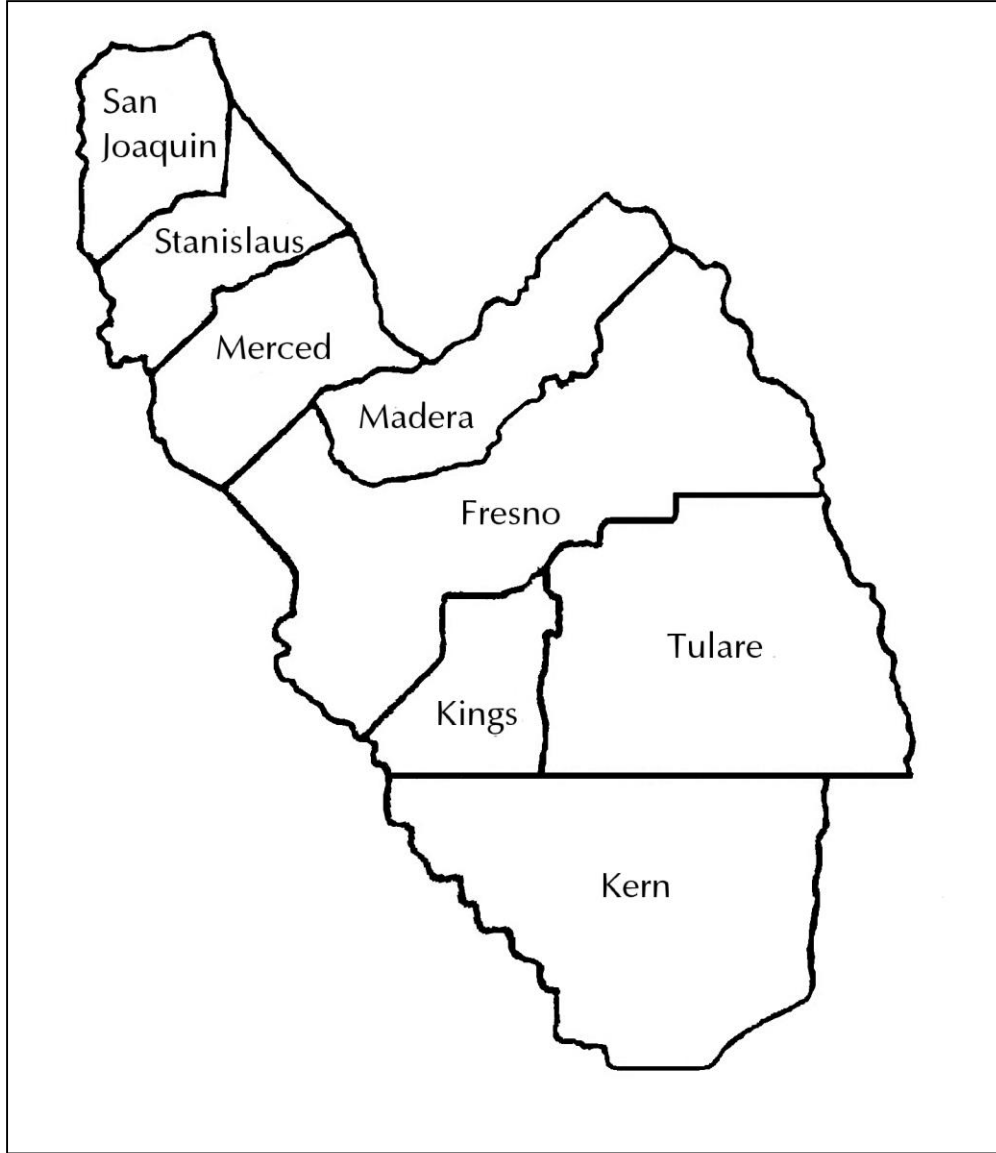


EXHIBIT D

Construction Criteria Pollutant Emissions Estimates for the Project

Total Project Construction Emissions				
Project Component	Criteria Pollutant Emissions (tons/year)			
	ROG	NO _x	PM ₁₀	
Fifth Standard Solar	0.93	15.00	13.28	
Stonecrop Solar	0.51	8.21	6.89	
Blackbriar Battery Storage	0.49	7.94	6.65	
Total	1.93	31.15	26.82	
	ROG	NO_x	PM₁₀	
Total Construction Emissions (tons/year) with Stonecrop:	1.93	31.15	26.82	
Total Construction Emissions (tons/year) without Stonecrop:	1.42	22.94	19.93	
Cost per Ton:	\$ 9,350	\$ 9,350	\$ 9,011	
Mitigation Funds with Stonecrop:	\$ 18,046	\$ 291,253	\$ 241,675	
Administrative Fee (4%) with Stonecrop:	\$ 722	\$ 11,650	\$ 9,667	
Mitigation Funds without Stonecrop:	\$ 13,277	\$ 214,489	\$ 179,589	
Administrative Fee (4%) without Stonecrop:	\$ 531	\$ 8,580	\$ 7,184	
Total Mitigation Fees with Stonecrop:	\$ 18,767	\$ 302,903	\$ 251,342	
Total Mitigation Fees without Stonecrop:	\$ 13,808	\$ 223,069	\$ 186,773	
Estimated Total Mitigation Fees (Construction) with Stonecrop:			\$573,012	
Estimated Total Mitigation Fees (Construction) without Stonecrop:			\$423,649	

Source: Fifth Standard Solar Complex Draft EIR, Table 4.3-6: Mitigated Construction Emissions Summary

Subsequent to Fresno County approval of the Project, the Developer has decided not to pursue the Stonecrop Solar component. However, if the Developer decides to move forward with the Stonecrop Solar component, the Developer will notify the District within 60 days prior to acquiring the building permit and agrees to advance Air Quality Mitigation Funds based upon the current Emission Reduction Cost Schedule plus an administrative cost prior to commencing construction related activities under this Agreement.