

**AGREEMENT BETWEEN COUNTY OF TEHAMA AND
CORNING SOLAR 1, LLC FOR INDEMNITY
AND THE PAYMENT OF COSTS FOR ENVIRONMENTAL REVIEW**

THIS AGREEMENT is entered into this twenty-first day of March 2017 by and between the COUNTY OF TEHAMA ("County") and Corning Solar 1, LLC (collectively "Developer").

RECITALS

- A. Developer desires to develop a solar generation facility ("the Development").
- B. County intends to retain consultants to prepare an Environmental Impact Report ("EIR") for the Development, and will further be required to devote staff time and County resources to the preparation, review, and circulation of the EIR. The EIR must reflect the County's independent judgment, and must be legally adequate and objective.
- C. Developer wishes to reimburse the County for these expenses, to facilitate the County's preparation and review of the EIR and related documents.
- D. Developer further wishes to provide legal defense and indemnity for the County in the event of any challenge to County's approval of the Development and/or certification of the EIR.

NOW, THEREFORE, the Parties hereby enter into this Agreement for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

TERMS AND CONDITIONS

1. Payment of County Expenses. Developer shall reimburse County for all costs associated with retaining any consultants and experts deemed necessary by County, in its reasonable judgment, to prepare and review the Draft and Final EIR for the Development, including all associated studies and ancillary tasks. Developer shall further reimburse the County for County staff time and costs incurred in the County's preparation, review, and circulation of the EIR, including all ancillary tasks. County staff time and direct and indirect costs shall be charged in accordance with the County's actual cost, as determined by the Tehama County Auditor-Controller. County shall not incur any fees or costs for third party assistance without first obtaining (a) a written budget and scope of work from each consultant or expert for services to be rendered, and (b) Developer's approval of such budget and scope of work, which shall not be unreasonably conditioned or withheld. The County shall not authorize third party fees and costs in excess of the written budget approval by Developer without first obtaining a revised written budget, which shall be submitted to Developer for its review and written approval prior to incurring any fees and costs in excess of the original written budget. Such approval shall not be unreasonably withheld or conditioned. If Developer does not approve any written budget submitted by the County for third party consultants or experts, the County may elect to discontinue preparation and review of the EIR, as well as to discontinue other project analysis, review and consideration. Both the County and Developer shall exercise their discretion

reasonably and in good faith to ensure prompt, adequate and cost effective CEQA compliance for the Development.

2. **Deposit.** In furtherance of the foregoing, Developer shall deposit with the County an initial sum of \$100,000.00, in the following installments:

- \$20,000.00 within thirty (30) days after execution of this Agreement by both parties;
- An additional \$60,000.00 (for a total of \$80,000.00) prior to execution of a contract between the County and the principal environmental consultant selected by the County for the Project; and
- An additional \$20,000.00 (for a total of \$100,000.00) upon receipt of the first invoice from the principal environmental consultant.

The County shall place this deposit into a special interest bearing account. Funds in that account will be used exclusively for the payment of County staff time and direct and indirect expenses incurred in preparing, reviewing, and circulating the EIR. It also shall be used for retention of environmental consultants with expertise in CEQA compliance necessary to prepare and review the EIR (including expert legal counsel, if deemed necessary by the County Counsel). It is the intent of the parties that the County be fully reimbursed for all expenses incurred, so long as such expenses are incurred in accordance with Section 1 above. In the event the funds in the initial deposit are expended prior to the completion of the County's analysis, Developer shall make subsequent deposits in amounts reasonably deemed by the County as necessary to pay foreseeable costs and expenses as they are incurred. In an event that sufficient funds are not on deposit in advance to permit the County to conduct its analysis, the County may elect to discontinue CEQA analysis and project review until Developer deposits further funds. Any funds on deposit after completion of all work by County shall be returned to Developer along with remaining interest.

3. **No Covenants.** Developer understands that the County cannot and does not make any representations concerning any actions the Tehama County Planning Commission or Board of Supervisors may take relating to the EIR or any entitlements or approvals for the Development. The determination of the County Planning Commission and Board of Supervisors will be based upon their independent judgments.

4. **Records.** The County shall maintain records of expenditures made from the funds on deposit for both internal County staff time and expenses and third party consultants and experts retained by the County. These records shall be sent to Developer for review every calendar quarter from commencement of the County's review of CEQA compliance for the Development. The review shall be for the purposes of satisfying Developer that the funds were properly expended for preparation, review, and circulation of the EIR for the Development. The County, however, reserves the right in its sole discretion to determine how the funds are spent, provided that the funds are spent in accordance with Section 1, and to determine what analysis is necessary by County staff. The County's election to retain third party consultants and/or experts shall be subject to Developer's budget review and approval as set forth in Section 1 above.

5. Right to Abandon. Developer has the right to withdraw or abandon its application for Development at any time prior to County approval. Such withdrawal shall be in writing. Upon receipt of the notice of withdrawal, the County will cease working on its analysis, notify its consultants to cease working, compensate its consultants for work performed, and reimburse itself for expenses incurred. Any funds remaining on deposit, and unused thereafter, will be returned to Developer.

6. Refund. Upon completion of the County's analysis and certification of the EIR by the County, if such should occur, any of Developer's funds on deposit and unexpended will be returned to Developer.

7. Legal Defense and Indemnity. Developer agrees to defend the County and, at the County's request, to provide counsel to appear and represent the County at Developer's sole cost and expense, in connection with any administrative, legal or equitable action or other proceeding to attack, set aside, void, annul or otherwise challenge any approvals by the County arising out of or in connection with the Development, including without limitation the legality or propriety of County's approval of the entitlements for the Development or certification of the EIR (collectively, "Action"). Counsel for the County in any such Action shall be selected by County, subject to the approval of the Developer, which approval shall not be unreasonably conditioned or withheld. County and Developer shall cooperate in defense of any such Action. Developer's obligation to provide such defense includes the obligation to indemnify and hold harmless the County, its officers, agents and employees from and against any and all claims, awards, fees, costs, damages, judgments, administrative orders, or payments in compromise and settlement, including all direct and administrative costs, and attorney's fees, with respect to any such Action. The County shall promptly give written notice to Developer, within (5) business days, of any Action filed against the County in relation to the Development and shall promptly and fully cooperate with Developer in its defense of any such Action, including stipulation to the intervention of Developer if Developer is not named in said Action as a Real Party in Interest. Developer shall not settle any such proceeding on terms which include the granting of any form of relief to any person not a party to this Agreement, excepting only monetary relief to be paid solely by Developer, without the consent of County, which consent shall not be unreasonably withheld.

8. Waiver. A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other terms, covenant or condition herein contained or of any continued or subsequent right to the same right of remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

9. Assignment. Unless a transfer or assignment is otherwise expressly permitted herein, this Agreement constitutes a personal contract and no party hereto shall assign or transfer this Agreement, or any part hereof, without the prior written consent of the other, which consent shall not be unreasonably withheld.

10. Completeness of Instrument. This Agreement, together with its specific references and attachments, is a fully integrated agreement and constitutes all of the agreements,

understandings, representations, conditions, and covenants made between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

11. Supersedes Prior Agreements. It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto with respect to the subject matter of this Agreement.

13. Rules of Construction. Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

a. **Captions.** The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

b. **Number and Gender.** In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the words "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

c. **Mandatory and Permissive.** "Shall" and "will" and "apply" are mandatory. "May" is permissive.

d. **Term Includes Extensions.** All references to the term of this Agreement or the Agreement Term shall include any extensions of such Term.

14. Successors and Assigns. Subject to the limitations on transfer set forth in Section 9, all representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

15. Modification. No modification or waiver of any provisions of this Agreement or its entitlements shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which it is given.

16. Counterparts. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

17. Other Documents. The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of the Agreement's purposes.

18. Partial Invalidity. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the

remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

19. Jurisdiction. It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof, or for declaratory relief hereunder, shall be filed and remain in a court of competent jurisdiction in the County of Tehama, State of California.

20. Controlling Law. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

21. Notices. All notices and demands of any kind which either party may require or desire to service on the other in connection with this Agreement must be served in writing by facsimile transmission and or registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party to be served as follows:

To County:

Williams Goodwin
Chief Administrator
County of Tehama
727 Oak St.
Red Bluff, CA 96080

With a copy to:

Arthur J. Wylene
County Counsel
County of Tehama
332 Pine Street
Red Bluff, CA 96080

To Developer:

Andy Atiyeh
President
Corning Solar 1, LLC
30 Galeana, Suite 100
Foothill Ranch, CA 92610

22. Incorporation of Exhibits. All exhibits mentioned herein and attached hereto are specifically incorporated herein by this reference and made a part of this Agreement.

23. Time is of the Essence. Time is of the essence of this Agreement and of each covenant, term and condition herein.

24. Authority. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), persons(s), estate(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

THIS AGREEMENT is entered into by and between the parties as of the date and year first set forth above.

CORNING SOLAR 1, LLC

COUNTY OF TEHAMA

(Signature)

Chairperson,
Tehama County Board of Supervisors

(Type or Print Name)

APPROVED AS TO FORM

Arthur J. Wylene
County Counsel

Counsel for Developer