For Clerk's Use Only:
AGENDA NUMBER

20

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

☐ Consent ☒ Departmental ☐ Correspondence Action ☐ Public Hearing

☒ Scheduled Time 10:30 a.m. ☐ Closed Session ☒ Informational

FROM: County Administrator / County Counsel / Planning

FOR THE BOARD MEETING OF: December 11, 2012

SUBJECT: Consideration of Agreement Proposed By BrightSource Energy For The Hidden Hills Solar Energy Generating System Project

INTRODUCTION

BrightSource Energy (BrightSource, or BSE) has submitted an application to the California Energy Commission (CEC) for the Hidden Hills Solar Energy Generating System (HHSEGS). The project consists of two 250-megawatt solar thermal power plants adjacent to each other in southeast Inyo County.[1] The project site is about 5.1 square miles in area north of Old Spanish Trail just west of the Nevada border in Charleston View. The site is located on private property, comprising approximately 3,200 acres which is approximately 3% of all private land in the County (not including any additional mitigation land within Inyo County that the CEC is likely to require the project to provide). The proposed power plant includes two approximately 750-foot towers each surrounded by 85,000 mirrors that focus sunlight on boilers at the top of the towers; this runs generators near the base of the towers to produce electricity. The project will also utilize natural gas to supplement heat generation. The electricity is expected to be conveyed to California via power lines through Nevada; the Bureau of Land Management's (BLM) Southern Nevada District Office is preparing an Environmental Impact Statement for the electric transmission line and a natural gas pipeline that will supply gas to the proposed project. The project is expected to employ up to 2,300 construction workers during its peak construction period, and proponents claim it will employ 100 workers to operate the power plant. Only a fraction of these jobs are expected to be held by Inyo County residents.

The CEC has exclusive permitting jurisdiction over the project pursuant to the Warren Alquist Act (Public Resources Code, Section 25000 et seq.). This means that the County is not the permitting agency. While the CEC must consider whether the project complies with the County's laws, regulations and ordinances, the CEC is not required to disapprove the project if it is not in compliance with such laws, regulations and ordinances. Its review process is a certified regulatory program under the California Environmental Quality Act, which means that the environmental analysis the CEC undertakes as part of its permit process satisfies CEQA requirements. The CEC has issued a Preliminary Staff Assessment for the project, and the Final Staff Assessment is expected to be issued later this month. A committee consisting of two Commissioners and a Hearing Officer presides over the proceedings, with the full Commission rendering a decision based on the recommendation of the Committee. Under the current schedule, a final decision is anticipated in early 2013.

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1 Refer to the CEC's website for the project at http://www.energy.ca.gov/sitingcases/hiddenhills/ for more information regarding the project and the CEC entitlement process.

The State of California believes that the project is largely excluded from having to pay property tax. Because of the proximity of the project to Pahrump and Las Vegas, it is expected that almost all of the project's construction workers will reside in those areas and spend their money in those areas. As a result of these circumstances, the County has concluded that the project will likely be a significant cost to the County rather than a source of revenue.

For over a year, County staff and company representatives have engaged in discussions regarding various agreements that might ensure that the project does not negatively impact County programs and services and, ideally, provides some economic benefit to the County. Most recently, these discussions have centered on developing a sales tax agreement that would guarantee the County will receive a specific amount of General Fund sales tax revenue from the project; primarily as a result of construction expenditures on equipment, materials, and supplies that would be purchased (unlikely) or used (likely) in Inyo County during the project's 30-month construction period. In accordance with these discussions, County staff developed and submitted to BSE a draft of a proposed sales tax agreement. BSE did not accept the County's draft and instead submitted a red-lined version of the draft agreement to the County.

The red-lined draft of a proposed *Agreement Between the County of Inyo, California, and BrightSource Energy* (BSE Agreement - Attachment A) is being presented to your Board for consideration at the request of BSE. Company officials have asked for an opportunity to address the Board of Supervisors and make a presentation regarding the merits of their proposal. For comparison, and possible consideration, a copy of the sales tax agreement developed by County staff in October (County Agreement) is provided as Attachment B.

DEPARTMENTAL RECOMMENDATION:

For the reasons presented below, Staff is unable to endorse the agreement proposed by BrightSource Energy, and recommends that your Board of Supervisors decline the agreement as presented. However, your Board may wish to consider authorizing the Chair to sign the agreement originally proposed by staff to BrightSource Energy, and on which BSE's proposed agreement is based, contingent on all required signatures being obtained by December 30, 2012.

SUMMARY DISCUSSION:

The BSE Agreement

The BSE Agreement (Attachment A) provides the County with a guaranteed payment of $8,800,000 18-months after the Hidden Hills power plant commences operations. The amount of the payment will be reduced by the amount of sales tax (specifically, the 0.75% Bradley-Burns local tax allocation) received in the County General Fund, and attributable to the HHSEGS project, from the commencement of construction until 18-months after construction is complete. The agreement also provides for other possible off-sets and credits that could be applied against the $8.8 Million dollar payment (e.g., if a renewable energy license fee similar to Riverside County's is passed by the Board of Supervisors or imposed by a citizens' initiative; County fees specific to the project; the project being found not to be exempt from full property tax assessments). Essentially, if the County collects the amount of sales tax from the project as

estimated by BSE, the company's obligation to the County under the BSE Agreement after the project begins to produce electricity could be zero dollars, and will most likely be less than $1 Million. In exchange for the guarantee of $8.8 Million of, essentially, sales tax revenue, the County will be required to provide a letter to the California Energy Commission that states:

1. The $92,921,000 in cost impacts to County programs and services from the construction and operation of the Hidden Hills project, as described in the County's February 16, 2012, letter to the CEC (Attachment C), have been resolved;

2. "There will be no significant adverse direct, indirect, or cumulative socio-economic impacts to County of Inyo as a result of the increased need to provide County services relating to the construction and operation of the proposed project" on County departments;

3. The County withdraws its request that the California Energy Commission impose a condition on the project ensuring that the County receives at least $84.5 Million of the $86.5 Million in revenue projected in the CEC's socio-economic analysis by requiring BrightSource to guarantee this revenue to the County; and,

4. The doubling of the number of construction workers (from 1,100 to nearly 2,300) and other changes in the project description, revealed by BrightSource in October, does not create additional impacts on County programs and services not previously identified by the County, and that the County maintains that all of its cost-impacts have been resolved.

The BSE Agreement does provide that BrightSource will pay the County a fee (distinguished from a penalty) of $10,000 for each heavy truck that uses Old Spanish Trail between the project site and Highway 127 in Tecopa to deliver, or return from delivering materials to the project during construction or operation. However, BrightSource rejects the County's request that the company pay for the cost of repairing this road segment as a result of damage caused by the use of the road by nearly 2,300 construction workers that will commute to the project site to build the power plant over a 30-month period. BrightSource also refuses to endorse nine (9) other road-related mitigation measures proposed in the CEC's Preliminary Staff Assessment.

The County Agreement

The Agreement developed by County staff in October (Attachment B) in response to discussions with BrightSource officials provides the County with a guaranteed payment of $7,800,000 18-months after the Hidden Hills power plant commences operations. Again, the amount of the payment would be reduced by the amount of sales tax received in the County General Fund, and attributable to the HHSEGS project, and the other potential off-sets and credits noted above would apply. In exchange, the County would acknowledge that $7.8 Million of its estimated $81,017,488 in non-road related impacts to County programs and services would be satisfied by the agreement, and the County would not seek monetary compensation in this amount ($7.8 Million) from the CEC. However, in significant contrast to BSE's proposed agreement, the County Agreement would allow the County to seek compensation or other mitigation from the CEC for project-related costs to County programs and services above the $7.8 Million.

The reason the County Agreement did not reference the entire $92,921,066 in costs cited in the County's February 16, 2012 letter to the CEC is because some of these costs are reduced by provisions in the County Agreement. Specifically, the $11.9 Million attributable to road-related impacts during construction ($8,157,000) and operation ($78,500 per year), are mitigated by memorializing originally-proposed CEC road mitigation measures; adding a $10,000 per truck penalty for use of Old Spanish Trail between the project and Tecopa in violation of the proposed prohibition of heavy trucks on this road segment during construction and operation of the project; and, the requirement for BrightSource to repair road damage attributable to the construction workforce of approximately 2,300 workers commuting to and from homes in other California counties on weekends.

Analysis

While the County Agreement and BSE Agreement are similar in many respects, with most sections being identical, the changes that BrightSource has imposed to the County Agreement are significant and unacceptable because they result in the County being asked to ignore significant financial risks being posed to it by the Hidden Hills project. Among the concerns staff has identified with the BSE Agreement, there are two primary issues that result in the recommendation to reject the BSE Agreement:

1. The BSE Agreement requires the County to waive <u>all</u> claims to socioeconomic impacts (costs to County programs and services) resulting from BrightSource's construction and operation of the Hidden Hills project. County department heads have conservatively estimated the costs the County will incur as a result of BrightSource's project at $92,921,066 during the power plant's construction and first 25-years of operation ($81,017,488 if road-related costs are excluded). The County transmitted these socioeconomic impacts to the California Energy Commission in its February 16, 2012, letter (Attachment C). These cost impacts were also enumerated, and acceptable mitigation measures and payments identified, in Resolution 2012-29, adopted by your Board on July 17, 2012, and subsequently transmitted to the CEC (Attachment D).

   In exchange for agreeing to waive <u>all</u> these mitigation measures and payments, BrightSource is only willing to guarantee the County $8.8 Million, most, if not all of which will be comprised of sales tax revenue that BrightSource will have to pay (to the County, or some other jurisdiction) in any case.

2. The ability of the agreement to alleviate the likelihood of the County incurring road-related costs from the construction and operation of the project – namely by provisions establishing penalties for heavy trucks using Old Spanish Trail between Hidden Hills and Tecopa, and BrightSource funding the costs of repairing all road damage from its construction workforce – has been eroded by BrightSource's refusal to fund the cost of road repairs attributable to its construction workforce; and its challenge to road mitigations already proposed for the project by the CEC in the Preliminary Staff Assessment.

It should be noted that the County Agreement poses its own risks and presents concerns that are carried over to the BSE Agreement. Chief among these is that presumed sales tax payments to the County, which the State Board of Equalization makes to the County in arrears on a quarterly

basis, are likely to be realized only after the County has incurred its initial costs during construction of the Hidden Hills project. This concern is exacerbated if sales tax revenues fail to materialize, and the County's receipt of the $7.8 Million, or some portion thereof is delayed until 18-months after the facility starts generating electricity. In this case, the County may have already incurred over $12.8 Million in costs for program and service impacts (which will be greatest during the Hidden Hills' construction period) before it realizes the guaranteed revenue.

Additionally, although BSE is obligated to guarantee that the County will receive $7.8 Million in sales tax, the County Agreement does not contain provisions that BrightSource require its project contractor and sub-contractors make an otherwise discretionary election to the State Board of Equalization for direct allocation of sales tax to the job-site. BrightSource officials indicated they opposed such a condition, but by requiring its contractor and sub-contractors to seek the direct allocation of sales tax to the job site, BrightSource could ensure that Inyo County's sales tax revenues were fully maximized. It should be noted that a failure by BSE to make the direct allocation election could reduce the County's share of sales tax by over $3 Million. This risk is another reason why the County Agreement allows the County to seek mitigation from the CEC for costs to the County which exceed $7.8 Million.

Common to both proposed Agreements is the reliance on BrightSource's estimate of sales and use taxes that will be generated by the HHSEGS project (Attachment E) for arriving at the $7.8 Million in sales tax expected to accrue to the County's General Fund as a result of HHSEGS construction activities. BrightSource estimates that the Hidden Hills project will make $1.05 Billion in construction expenditures on equipment, materials and supplies that will either be purchased or used in Inyo County. This $1.05 Billion in construction expenditures is expected to generate $81.375 Million in total sales and use tax revenue, of which $46.620 Million will go directly to the State of California. Of the remaining $34.755 Million shown as being allocated to the county (lowercase "c" intentional), only $7.875 Million is expected to accrue to the Inyo County General Fund. The funding shown as allocated to the county in the State Local Public Safety Fund ($5.250 Million) and State Local Health and Human Services Fund ($5.250 Million) State Local Revenue Fund ($11.130 Million) will actually go to the State of California which will then allocate the funds among all counties in the state using program-specific formulas (e.g., the county allocation formula for AB 109). There is no correlation between the amount of money collected and the amount distributed by the State per the formulas for these taxes.

While far from sufficient to pay for the cost of all of the identified impacts the construction and operation of the Hidden Hills project will have on County programs and services – which totals more than $92.921 Million during the construction and first 25-years of operation of the power plant – staff views the development of a sales tax agreement as a good first step toward assuring the County receives at least some funding to begin to offset the costs the County will incur as a result of the project. In other words, a sales tax agreement could provide a dollar-to-dollar approach to begin to identify funds the Board of Supervisors would have available to consider appropriating for increased program and service costs attributable to the Hidden Hills project when it considers future County Budgets. This concept is embodied in the County Agreement by the language contained in Section 3.2 (Non-Road Impact Costs):

> the County agrees that $7,800,000 of the County's estimated non Road-related impact costs resulting from the construction and operation of the Project are satisfied and the County will not seek monetary compensation in such amount from the CEC during or after its review

> process of the Hidden Hills application. To the extent that the County's estimated non Road-related impact costs resulting from the construction and operation of the Project exceed $7,800,000, the County may seek additional mitigation, including monetary mitigation, from the CEC during or after its review process

This dollar-to-dollar approach is a departure from how California cities and counties typically mitigate impacts from development projects, but it is one that needs to be considered in light of the State of California's processes and statutes for permitting solar thermal power plants like the Hidden Hills project. Typically, impacts to county or city services from the development of a project would be mitigated as part of the conditions imposed on the project by its permit. Any sales or property tax revenue accruing to the jurisdiction would be discretionary revenue that the local governing body would choose to spend however it sees fit for the benefit of the entire community. However, the Public Resources Code provides the California Energy Commission with the ability to consider any revenue (including discretionary revenues like sales and property taxes) that might accrue to a jurisdiction as being available to the jurisdiction to mitigate a solar thermal power plant's impacts, rather than simply requiring the project to mitigate the impacts outright. (In the case of the Hidden Hills project, the CEC's socioeconomic consultant goes so far as to suggest the County invest the sales tax proceeds it receives during project construction phase so it has money available to fund impacts from Hidden Hills operations in the outlying years.) This deprives local jurisdictions of discretionary revenue, and limits the ability of local governing bodies to exercise independent budget authority.

The ramifications of the Public Resources Code will affect how the California Energy Commission ultimately mitigates the impacts of the BrightSource Hidden Hills project on Inyo County, and should be taken into account by your Board when considering any agreement with BrightSource Energy. The socioeconomic impact report contained in the CEC's Preliminary Staff Assessment for the Hidden Hills project expresses the estimated project induced stream of costs and revenues to the County, over a 28-year period that includes both the approximately 3-year construction period and the first 25 years of the generating system's operation, in terms of their *present value.* To calculate their present value, the stream of revenues and costs are discounted at 5.2 percent. Using the County's original estimate of costs (approximately $11,100,000 during construction and $1,700,000 per year during operation) with the CEC report's estimate of expected revenue to the County ($86,500,000 during construction and $1,000,000 per year during operation), the CEC report calculated a net present value of a positive $61,000,000 with the discounted value of the County's cost totaling only $31,000,000. When using the CEC report's much lower estimate of County expenditures ($2,800,000 during construction and $390,000 during operation), the CEC report presents a net present value calculation of a positive $88,200,000 with the discounted value of the CEC's estimated County costs totaling only $4,100,000. In order to put the BSE proposal into the perspective suggested by methodology of the CEC, Gruen Gruen + Associates (GG+A) calculated the net present value of the $8,800,000 construction period proposal of BSE with the approximate $100,000 per year likely to flow to the County for the next 25 years, given the manner in which legislated exemptions could dramatically lower the assessed property value of the solar project. The result of GG+A's calculation suggests the effect of the proposed BSE deal would be a net present value <u>loss to the County of $21,855,000.</u>

The CEC report also estimates the County will receive $92.2 Million (Net Present Value) in revenue during the life of the project, (with $86.5 Million being received during the first 29 months of project construction). The County certainly disagrees with the CEC's assessment o f the project's impacts on County programs and services; noting the CEC's lack of expertise and experience in actually delivering such services, and much less determining the actual cost of doing so. However, in its response to the CEC's Preliminary Staff Assessment, the County indicated it might be able to accept the CEC's impact analysis, if the CEC would provide a guarantee for the amount of revenue its analysis projected as accruing to the County.

The $92.9 Million in projected County revenues contained in the CEC's analysis – and for which the County is seeking some sort of binding assurance from the CEC – stands in marked contrast to the $8.8 Million that BrightSource is offering to the County — on the condition that the County waive the right to seek mitigation from the CEC for any costs in excess of the $8.8 Million. In considering the BSE Agreement, the fundamental question might be, "Although the BSE Agreement guarantees that the County will receive $8.8 Million in sales tax revenue, is that guarantee sufficient to warrant the County giving up its rights to seek mitigation for costs in excess of $8.8 Million through the California Energy Commission process? Staff believes that the answer is a resounding, "No." With respect to the County Agreement, the answer is probably that, "It would not hurt," since the County would receive sales tax that BSE will have to pay in any event, and the County would preserve its ability to seek mitigation for costs in excess of the $7.8 Million guarantee.

ALTERNATIVES:

Your Board can elect to accept the agreement proposed by BrightSource Energy and authorize the Chair to sign the agreement contingent on all required signatures being obtained. This is not recommended for the reasons discussed above.

Your Board could also consider authorizing the Chair to sign the agreement prepared by staff (Attachment B) contingent on all appropriate signatures being received by a specific date.

Your Board could provide additional direction to staff based on today's discussion.

OTHER AGENCY INVOLVEMENT:

The California Energy Commission is the sole permitting authority for the Hidden Hills project. The Bureau of Land Management's Southern Nevada District Office is preparing an Environmental Impact Statement for the electric transmission line and a natural gas pipeline that will supply gas to the proposed project. Other Federal and State permitting agencies are commenting on the project, as is the Southern Inyo Fire Protection District. Other agencies in southeast Inyo County, including the Death Valley Unified School District, will be impacted by the project.

FINANCING:

Long-term costs to the County as a result of the BrightSource Hidden Hills project will be substantial, based on the costs identified by County Departments and revenues projected by BrightSource.

APPROVALS	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS *(Must be reviewed and approved by county counsel prior to submission to the board clerk.)* Approved: ✓ Date 12-5-12
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (*Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)* Approved: _____ Date_____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date_____

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)

Date: 12-05-2012

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)

Date: 12-5-12

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)

Date: 12-5-12

DECEMBER 11, 2012

INYO COUNTY BOARD OF SUPERVISORS

AGENDA ITEM 20

ATTACHMENT A

ATTACHMENT A

BrightSource Energy Agreement

CONFIDENTIAL AND PRIVILEGED
FOR DISCUSSION

AGREEMENT BETWEEN THE COUNTY OF INYO, CALIFORNIA AND BRIGHTSOURCE ENGERGY

This Agreement (the "Agreement") is entered into this _____, 2012 by and between the County of Inyo, California, a political subdivision of the State of California ("County"), and Hidden Hills Solar I, LLC and Hidden Hills Solar II, LLC (collectively, "Hidden Hills Solar"). Hereinafter, the County and Hidden Hills Solar may be referred to individually as a "Party" or collectively as "the Parties."

RECITALS

WHEREAS, Hidden Hills Solar proposes to develop a 500 MW solar thermal project located in Inyo County, California, to be known as the Hidden Hills Solar Electric Generating System ("HHSEGS" or "the Project"), on private property located in Township 22 North, Range 10 East, Sections (or portions thereof) 15, 16, 20, 21, 22, 23, 26, 27, and 28; assessor parcel numbers 048-110-002, 048-120-010 and all parcels in Book 048 pages 50, 60, 61, and 64 through 71. The Project will be located on properties leased from the Roland John Wiley Trust, the Mary Wiley Trust, Section 20, LLC and Peggy Tsiamis.

WHEREAS, under the Warren-Alquist State Energy Resources Conservation and Development Act ("Warren-Alquist Act"), beginning at Section 25500 of the Public Resources Code, construction and operation of the Project is subject to approval by the California Energy Commission ("CEC") which must certify the site and related facilities before the Project can be constructed.

WHEREAS, Hidden Hills Solar has submitted an application for certification of the Project to the CEC.

WHEREAS, Title 21 of the Inyo County Code, sets forth the County's procedures and standards for the issuance of a Renewable Energy Permit which would have to be granted by the County before the Project could be constructed, but for the exclusive jurisdiction of the CEC. Title 21 mandates mitigation for both environmental and economic impacts caused by a project as a condition of a Renewable Energy Permit.

WHEREAS, Hidden Hills Solar has estimated that a minimum of $7,800,00 of California Sales/Use tax will be allocated to Inyo County during the construction of the Project.

WHEREAS, Hidden Hills Solar is willing to guarantee payment to Inyo County of $7,800,000, plus an additional $1,000,000, for a total of $ 8,800,000, subject to the credits and conditions stated herein.

WHEREAS, by this Agreement, the parties (1) agree ~~upon~~ that this~~a~~ payment by Hidden Hills Solar to the County ~~to~~will offset the costs of ~~some of~~ the economic impacts to the County with respect to each of the County offices and departments listed in Table 1 of the County's letter of

February 16, 2012 to the CEC that will result from the Project; (2) ~~and~~ agree upon certain measures to mitigate impacts resulting from the Project to a County road; and (3) agree to jointly develop and recommend to the CEC the inclusion of these mitigation measures as conditions of certification.

WHEREAS, the Parties intend this Agreement to be binding on each party, its successors and assigns and acknowledge the receipt of adequate consideration for their entry into this Agreement.

ARTICLE 1
ECONOMIC MITIGATION PAYMENT

1.1 Agreed Upon Payments. As provided below, the parties will recommend to the CEC that it include as final conditions of certification the payments described in this Article.

1.2 Payment and Time of Payment. No later than the first day of the eighteenth month following the Commencement of Operation of the Project ("Payment Date"), Hidden Hills Solar shall pay to the County ~~Seven~~ Eight Million Eight Hundred Thousand Dollars (~~$7~~8,800,000.00), (hereinafter referred to as "Payment") subject to the credits set forth herein.

1.3 Credits. The Payment shall be reduced by the following credits.

1.3.1- .75% Bradley-Burns Sales Tax Receipts. The Payment shall be reduced by the amount of sales tax received before the Payment Date by the County General fund for County operations and attributable to the .75% Bradley-Burns local tax allocation collected directly from the construction of the Project. In the event a dispute arises concerning the amount of such sales tax allocations, the party contesting the allocation shall bear the cost of any audit undertaken to verify the accuracy of the allocation.

1.3.1(a) If Hidden Hills Solar elects to reduce the payment provided for in Section 1.2, above, by the .75% Bradley-Burns local tax allocation collected directly from the construction of the Project, once a quarterly, Hidden Hills Solar shall provide to the County the quarterly sales tax report for the previous quarter from any and all contractors or sub-contractors which designate the project site as the point of sale for sales tax purposes during the construction of the Project. The County shall verify the alleged payments identified in the reports with its quarterly allocation of sales tax received from the Board of Equalization. The County shall promptly notify Hidden Hills Solar should the County identify any discrepancy and the parties shall meet and confer to resolve the discrepancy.

1.3.2 Property Tax. The Payment shall be reduced by a portion of the property tax received by the County General Fund before the Payment Date but only to the extent that the property tax received is a result of a final determination that the exclusion provided for under California Revenue and Taxation Code Section 73 does not apply to the Project. The Payment shall not be reduced by the portion of the property tax received that is not a result of such a determination.

1.3.3 "Sun Tax". In the event the County enacts a special assessment, fee or other tax which applies exclusively to the generation of solar energy, the Payment shall be reduced by the amount any revenues received by the County prior to the Payment Date as a result of such assessment or tax on the Project.

1.3.4 Fees. In the event any fee is charged by the County exclusively to the Project and not routinely charged to other developers or not authorized by existing County ordinances or resolutions, the Payment shall be reduced by the amount any revenues received by the County prior to the Payment Date as a result of such fee. Hidden Hills Solar shall pay all other Project related fees and costs to the County in the same manner and amount as charged to other developers and as required by County Code, ordinances and/or resolutions and the Payment shall not be reduced by the amount of such fees and costs paid by the Project.

1.4 Calculation of Payment. Not later than 60 days prior to the Payment Date, the County will provide Hidden Hills Solar with a written notice of the amount of the Payment together with an itemization of any credits against the Payment as provided in 1.3. Within 30 days of receipt of the notice, Hidden Hills Solar shall notify the County if it objects to the amount of the payment and its reasons for such an objection. Within 10 days of receipt of such notice, County and Hidden Hills Solar shall meet and confer in a good faith attempt to resolve the objections. By the Payment Date, Hidden Hills Solar shall pay to the County the amount specified in the County's notice or, if the parties have agreed upon a different amount, the amount agreed upon.

ARTICLE 2
OLD SPANISH TRAIL HIGHWAY MITIGATION MEASURES

2.1 Agreed Upon Mitigation Measures. As provided below, the parties agree to the following mitigation measures and will further recommend to the CEC that it include ~~as final conditions of certification~~ the mitigation measures described in this Article as part of the jointly developed Conditions of Certification described in Section 2.2.2.

2.2.2 Old Spanish Trail Highway Mitigation. The road to the west of the Project site and terminating at California State Highway 127 is called the "Old Spanish Trail Highway." The parties agree to develop and jointly submit to the CEC proposed Conditions of Certification (hereinafter "COC") which COCs are intended to prevent project-related heavy truck traffic on that portion of Old Spanish Trail Highway between the Project site and California State Highway 127. The mechanisms agreed to and that will be jointly recommended to the CEC for inclusions of the final conditions of certification to prevent heavy truck traffic from utilizing that portion of Old Spanish Trail Highway is as follows:

2.2.2(a) Heavy Truck Traffic During Construction: During the period between the Commencement of Construction and the Commencement of Operation of the Project, Hidden Hills Solar shall pay a per truck fee~~penalty~~ of $10,000.00 for each heavy truck which uses the portion of Old Spanish Trail Highway between California State Highway 127 and the Project site to deliver materials to the Project or to return after delivering materials to the Project site. Further, Hidden Hills Solar shall be required to reimburse the County for the cost of

repairing any damage caused to Old Spanish Trail Highway by such truck use. Such reimbursement shall be made to the County within 30 days of receipt by Hidden Hills Solar of an invoice from the County for the cost of such repairs, as provided for in Section 2.~~1~~2.2(~~d~~c), below.

2.2.2(b) Heavy Truck Traffic During Operations: Following the Commencement of Operations of the Project, Hidden Hills Solar shall pay a per truck fee~~penalty~~ of $10,000.00 for each heavy truck which uses the portion of Old Spanish Trail Highway between California State Highway 127 and the Project site to deliver materials to the Project or to return after delivering materials to the Project site. Hidden Hills Solar shall not be required to reimburse the County for the cost of repairing any damage caused to Old Spanish Trail Highway by such truck use. Such fee shall be paid to the County as provided for in Section 2.2.2(c) below.

~~**2.2.2(c) Workforce Traffic During Construction:** During the period between the Commencement of Construction and the Commencement of Operation of the Project, Hidden Hills Solar shall be required to reimburse the County for the cost of repairing any damage caused to Old Spanish Trail Highway by workforce traffic use. Prior to the Commencement of Construction, Hidden Hills Solar shall document the condition of the roadway, as provided for in COC Trans-3, which shall be shared with the County. The County shall inform Hidden Hills Solar of any damage in need of repair and invoice the cost of the repair to Hidden Hills Solar. Reimbursement shall be made to the County within 30 days of receipt by Hidden Hills Solar of the invoice.~~

2.2.2(c) If the County believes that a heavy truck has used the portion of Old Spanish Trail Highway between California State Highway 127 and the Project site to deliver materials to the Project or to return after delivering materials to the Project site, within 10 days of learning of such use, the County shall provide an invoice for the fee~~penalty~~ together with a written notice to Hidden Hills Solar providing the date and time of such use and, to the extent possible, a description of the heavy truck and the actual or expected costs of any repairs to the road caused by the heavy truck use. Within 15 days of the receipt of such notice, Hidden Hills Solar shall notify the County if it objects to the fee~~penalty~~ and/or to the amount of the repair costs together with its reasons for such an objection. Within 10 days of receipt of such notice, County and Hidden Hills Solar shall meet and confer in a good faith attempt to resolve the objections. If Hidden Hills Solar and the County are unable to resolve the objection, the parties agree to submit the matter to the Compliance Project Manager ("CPM") ~~shall~~ to make the final determination. As appropriate, within 10 days of ~~the~~ an agreement at a meet and confer meeting, or within 10 days of a CPM decision, Hidden Hills Solar shall pay to the County any ~~penalty~~fee and repair costs specified by the CPM or, if the parties have agreed upon a different amount, the amount agreed upon.

~~**2.2.3 Other Highway Related Mitigation Measures:** The parties hereby agree to Conditions of Certification Trans-1 through Trans-9 in the form recommended in the Preliminary Staff Assessment, as amended herein, and shall recommend that the CEC include those conditions as final conditions of certification.~~

Comment [ESH1]: We would like to discuss which provisions of TRANS-1 through TRANS-9 are most important to the County. HHSEGS has submitted comments expressing implementation concerns with these conditions to the CEC, and proposed several changes to each of these conditions.

2.4 Enforcement of Mitigation. The parties agree that the mitigation measures described in this Article 2, shall be binding and enforceable notwithstanding whether such conditions are included as conditions of certification in the final order of the- CEC granting the application for certification.

ARTICLE 3
ACKNOWLEDGEMENT OF MITIGATION OF CERTAIN IMPACTS

3.1 Road Impact Costs During Construction. In consideration for the agreement by Hidden Hills Solar to the mitigation set forth in Article 2, the County agrees that it will not seek monetary compensation from the CEC during or after its review process of the Hidden Hills Solar application for impact costs resulting from any project-related use of the Old Spanish Trail Highway by heavy trucks. ~~The County has presented an estimate to the CEC that such impacts costs to the Inyo County Road Department would be$8,157,000.~~

3.2 Non-Road Impact Costs. The County has submitted an estimate to the CEC that the financial impacts to County, not including Road impacts, resulting from the construction and operation of the Project ~~would be $$81,000,000~~. In consideration of the agreement by Hidden Hills Solar to make the payment set forth in Article 1, the County agrees that this payment fully and completely satisfies and resolves the costs and impacts to the County offices and departments listed in Table 1 of the County's letter to the Commission dated February 16, 2012, ~~$7,800,000 of the County's estimated non Road-related impact costs resulting from the construction and operation of the Project are satisfied~~ and the County will not seek monetary compensation ~~in such amount~~ from Hidden Hills Solar with respect to any costs that may be incurred by such Departments, directly or indirectly, as a result of construction or operation of the Project, including the costs relating to public roads owned and maintained by the County. ~~the CEC during or after its review process of the Hidden Hills application. To the extent that the County's estimated non Road-related impact costs resulting from the construction and operation of the Project exceed $7,800,000, the County may seek additional mitigation, including monetary mitigation, from the CEC during or after its review process of the Hidden Hills Solar application to compensate the County for the costs of such anticipated economic impacts resulting from the construction and operation of the Project.~~

3.2.1 County release of claims. Upon execution of the agreement, County will submit a letter to the Commission stating that the following concerns raised in its February 16, 2012 letter and comments on the PSA have been resolved:

a. That there will be no significant adverse direct, indirect, or cumulative socioeconomic impacts to the County of Inyo as a result of the increased need to provide County services relating to the construction and operation of the proposed project, specifically the increased services necessary from the following County departments: Sheriff's Department, Health and

Human Services. Integrated Waste Management, Motor Pool, Inyo/Mono Agriculture Commissioner, Water Department, Information Services. and Assessor.

c. That the County's proposed "SOCIO-2 (Local Sales and Use Tax" condition of certification is no longer necessary, and that the County retracts this proposed condition.

d. That the increased worker numbers and other information contained in Applicant's October 1, 2012 filing does not affect County's determination that the concerns raised regarding potential impacts to Inyo County in the subject areas identified in Inyo County's February 16, 2012 letter to CEC Staff have been resolved.

ARTICLE 4
TERM

4.1 The term of this Agreement shall be until the decommissioning of the Project.

ARTICLE 5
DEFINITIONS

5.1 Commencement of Construction. The Commencement of Construction of the Project shall be deemed to occur upon the occurrence of the earlier of (a) a written notice of the determination by Hidden Hills Solar to proceed is given to the County, or (b) upon commencement of grading and compaction activities required for site preparation of the Project site.

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5.3 Heavy Trucks. A heavy truck is a vehicle which is larger than a one-ton truck.

ARTICE 6
MISCELLANEOUS

6.1 Governing Law. This Agreement shall be governed by, construed under and enforced in accordance with the laws of the State of California.

6.2 Joint Effort. The Parties acknowledge that each Party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto.

6.3 Captions. The captions and headings in this Agreement are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope of this Agreement or the intent of any provision thereof.

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

6.5 Time is of the Essence. Time is of the essence with respect to the performance or observance of each of the obligations, covenants and agreements under this Agreement.

6.6 Authority. Hidden Hills Solar hereby represents and warrants to the County that the persons who have executed this Agreement have been authorized to do so by Hidden Hills Solar.

6.7 Other Agreements/Documents. Each Party hereby represents and warrants to diligently pursue negotiation and execution of any agreements and documents identified herein, and/or any other agreements or any other project to be undertaken pursuant to this Agreement.

6.8 Notices. All notices to be given hereunder shall be in writing and shall be served, either personally or by mail, postage prepaid, to the County or Hidden Hills Solar at the addresses set forth below, or to any other address provided by one (1) Party to the other Party in writing. Hidden Hills Solar reserves the right to change the identity of the Party to whom notices to Hidden Hills Solar hereunder should be sent by notifying the other Party in writing. The effective date of such written notice shall be the date of personal delivery or the date of receipt by certified mail

Notices to the County:

Clerk of the Inyo County Board of Supervisors
P.O. Drawer N
Independence, California 93526

Notices to Hidden Hills Solar:

Hidden Hills Solar I, LLC and Hidden Hills Solar II, LLC,
Care of : BrightSource Energy, Inc.
1999 Harrison Street, Suite 2150
Oakland, California 94612
Attention: Stephen Wiley
Phone: (510)-899-8938
Fax: (510) 550-8165

with a copy (which shall not constitute notice) to

BrightSource Energy, Inc.
1999 Harrison Street, Suite 2150
Oakland, California 94612
Attention: General Counsel
Phone: (510) 250-8154

6.9 Venue. In the event that suit shall be brought by any Party, the Parties agree that trial of such action shall be held in a State Court of the County of Inyo.

6.10 Entire Agreement. This Agreement, together with the other agreements referenced herein, contains the entire understanding between the Parties with respect to the subject matters herein. There are no representations, agreements, or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed or referenced herein. This Agreement may not be amended except by written instrument signed by all the Parties.

6.11 No Third Party Beneficiary. The Parties hereto mutually agree that this Agreement is for their sole benefit and is not intended by them to be, in part or in whole, for the benefit of any third party. There is no third party beneficiary to this Agreement.

6.12 Assignment.

6.12.1 Generally. This Agreement shall be binding upon, and inure to the benefit of, each of the Parties and their respective successors and permitted assigns. Except as provided in Section 5.12.2, no Party shall assign this Agreement or its rights or interests hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

6.12.2 Certain Exceptions. Notwithstanding the provisions of Section 5.12.1, the Parties agree that Hidden Hills Solar may, upon not less than ten (10) business days' prior written notice to the County, but without County's prior written consent, assign, pledge or otherwise transfer, in whole or in part, its rights and delegate its duties under this Agreement to (a) an Affiliate of Hidden Hills Solar, (b) a successor-in-interest by merger, consolidation or reorganization, (c) a purchaser or other transferee of the Project, or (d) in connection with any debt or equity financing of the Project; and the County agrees to enter into such direct agreements and other documents as may be reasonably required or requested by Hidden Hills Solar or its finance parties in connection with such assignment, pledge or transfer made in connection with any such debt or equity financing. Any assignee of Hidden Hills Solar under this Agreement shall agree in writing to be bound by all of the terms, covenants and conditions of this Agreement. Upon execution of an express written assumption in connection with (i) an assignment of Hidden Hills Solar's rights and obligations hereunder, or (ii) a direct agreement or similar document entered into by the County pursuant to this Section 5.12.2, Hidden Hills Solar shall be automatically released from any and all obligations hereunder. As used herein, the terms "Affiliate of" or "entity affiliated with" a specified entity or person means any other entity or person that directly, or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the entity or person specified. For purposes of the foregoing, "control," "controlled by," and "under common control with," with respect to any entity or person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity or person, whether through the ownership of voting securities, partnership or member interests, by contract or otherwise.

6.12.3 Other Assignments Null and Void. Any assignment in violation of this Section 5.12 shall be null and void and of no force or effect whatsoever.

6.13 Development as a Private Undertaking. No partnership, joint venture or other association of any kind by or between the County and Hidden Hills Solar is formed, implied or deemed to have arisen by operation of this Agreement.

6.14 Further Assurances. Each Party shall promptly perform, execute and deliver or cause to be performed, executed and/or delivered any and all acts, deeds, and assurances, including the delivery of any documents, as either Party may reasonably require in order to carry out the intent and purpose of this Agreement.

6.15 Nonwaiver. Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to any Party shall impair such right or remedy or be construed as a waiver of any such right or remedy, whether theretofore or thereafter arising or occurring. The waiver by a Party of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

6.16 Statement of the Status of this Agreement. Within ten (10) business days' of receipt of a written notice from Hidden Hills Solar, requesting that the County execute, acknowledge and deliver to Hidden Hills Solar a statement in writing certifying that (a) this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and identifying each modification); (b) there are not, to the County's knowledge, any uncured defaults on the part of Hidden Hills Solar or County hereunder, or specifying such defaults if any are claimed; and (c) any other matters pertaining to this Agreement which Hidden Hills Solar or any prospective purchaser or encumbrancer, shall reasonably request, the County shall provide the requested statement. In the event that the County fails to deliver such statement within such ten (10) business day period, Hidden Hills Solar shall send a second notice (by registered mail or courier) requesting such statement be delivered by the County to Hidden Hills Solar within the five (5) business day period commencing with receipt of the second notice. The County's failure to deliver such statement within either of such time periods shall constitute a material breach of this Agreement.

6.17 Release on Performance. If Hidden Hills Solar ceases to be the owner of the Project and a new owner of the Project has fulfilled all or part of the obligations contemplated in this Agreement, then, to the extent Hidden Hills Solar has not previously been released from those obligations under Section 5.12.2 hereof, Hidden Hills Solar shall be relieved of those obligations under this Agreement which have been fulfilled by such new owner.

5.18 Attorneys Fees. If either of the parties hereto brings an action or proceeding against the other, including, but not limited to, an action to enforce or declare the cancellation, termination, or revision of the Agreement, the prevailing party in such action or proceeding shall be entitled to receive from the other party all reasonable attorney's fees and costs incurred in connection therewith.

CONFIDENTIAL AND PRIVILEGED
FOR DISCUSSION

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first set forth above by their duly authorized representatives as follows:

HIDDEN HILLS SOLAR I, LLC
By: Hidden Hills Solar Holdings, LLC, its sole member
By: BRIGHTSOURCE ENERGY, INC., its sole member
By: _____
Name: _____
Title: _____

HIDDEN HILLS SOLAR II, LLC
By: Hidden Hills Solar Holdings, LLC, its sole member
By: BRIGHTSOURCE ENERGY, INC., its sole member
By: _____
Name: _____
Title: _____

COUNTY OF INYO
[Signature block]

DECEMBER 11, 2012

INYO COUNTY BOARD OF SUPERVISORS

AGENDA ITEM 20

ATTACHMENT B

CONFIDENTIAL AND PRIVILEGED
FOR DISCUSSION

AGREEMENT BETWEEN THE COUNTY OF INYO, CALIFORNIA AND BRIGHTSOURCE ENGERGY

This Agreement (the "Agreement") is entered into this _____, 2012 by and between the County of Inyo, California, a political subdivision of the State of California ("County"), and Hidden Hills Solar I, LLC and Hidden Hills Solar II, LLC (collectively, "Hidden Hills Solar"). Hereinafter, the County and Hidden Hills Solar may be referred to individually as a "Party" or collectively as "the Parties."

RECITALS

WHEREAS, Hidden Hills Solar proposes to develop a 500 MW solar thermal project located in Inyo County, California, to be known as the Hidden Hills Solar Electric Generating System ("HHSEGS" or "the Project"), on private property located in Township 22 North, Range 10 East, Sections (or portions thereof) 15, 16, 20, 21, 22, 23, 26, 27, and 28; assessor parcel numbers 048-110-002, 048-120-010 and all parcels in Book 048 pages 50, 60, 61, and 64 through 71. The Project will be located on properties leased from the Roland John Wiley Trust, the Mary Wiley Trust, Section 20, LLC and Peggy Tsiamis.

WHEREAS, under the Warren-Alquist State Energy Resources Conservation and Development Act ("Warren-Alquist Act"), beginning at Section 25500 of the Public Resources Code, construction and operation of the Project is subject to approval by the California Energy Commission ("CEC") which must certify the site and related facilities before the Project can be constructed.

WHEREAS, Hidden Hills Solar has submitted an application for certification of the Project to the CEC.

WHEREAS, Title 21 of the Inyo County Code, sets forth the County's procedures and standards for the issuance of a Renewable Energy Permit which would have to be granted by the County before the Project could be constructed, but for the exclusive jurisdiction of the CEC. Title 21 mandates mitigation for both environmental and economic impacts caused by a project as a condition of a Renewable Energy Permit.

WHEREAS, by this Agreement, the parties agree upon a payment by Hidden Hills Solar to the County to offset the costs of some of the economic impacts to the County that will result from the Project and agree upon certain measures to mitigate impacts resulting from the Project to a County road and agree to jointly recommend to the CEC the inclusion of these mitigation measures as conditions of certification.

WHEREAS, the Parties intend this Agreement to be binding on each party, its successors and assigns and acknowledge the receipt of adequate consideration for their entry into this Agreement.

CONFIDENTIAL AND PRIVILEGED
FOR DISCUSSION

ARTICLE 1
ECONOMIC MITIGATION PAYMENT

1.1 Agreed Upon Payments. As provided below, the parties will recommend to the CEC that it include as final conditions of certification the payments described in this Article

1.2 Payment and Time of Payment. No later than the first day of the eighteenth month following the Commencement of Operation of the Project ("Payment Date"), Hidden Hills Solar shall pay to the County Seven Million Eight Hundred Thousand Dollars ($7,800,000.00), (hereinafter referred to as "Payment") subject to the credits set forth herein.

1.3 Credits. The Payment shall be reduced by the following credits.

1.3.1 .75% Bradley-Burns Sales Tax Receipts. The Payment shall be reduced by the amount of sales tax received before the Payment Date by the County General fund for County operations and attributable to the .75% Bradley-Burns local tax allocation collected directly from the construction of the Project. In the event a dispute arises concerning the amount of such sales tax allocations, the party contesting the allocation shall bear the cost of any audit undertaken to verify the accuracy of the allocation.

1.3.1(a) If Hidden Hills Solar elects to reduce the payment provided for in Section 1.2, above, by the .75% Bradley-Burns local tax allocation collected directly from the construction of the Project, once a quarterly, Hidden Hills Solar shall provide to the County the quarterly sales tax report for the previous quarter from any and all contractors or sub-contractors which designate the project site as the point of sale for sales tax purposes during the construction of the Project. The County shall verify the alleged payments identified in the reports with its quarterly allocation of sales tax received from the Board of Equalization. The County shall promptly notify Hidden Hills Solar should the County identify any discrepancy and the parties shall meet and confer to resolve the discrepancy.

1.3.2 Property Tax. The Payment shall be reduced by a portion of the property tax received by the County General Fund before the Payment Date but only to the extent that the property tax received is a result of a final determination that the exclusion provided for under California Revenue and Taxation Code Section 73 does not apply to the Project. The Payment shall not be reduced by the portion of the property tax received that is not a result of such a determination.

1.3.3 "Sun Tax". In the event the County enacts a special assessment, fee or other tax which applies exclusively to the generation of solar energy, the Payment shall be reduced by the amount any revenues received by the County prior to the Payment Date as a result of such assessment or tax on the Project.

1.3.4 Fees. In the event any fee is charged by the County exclusively to the Project and not routinely charged to other developers or not authorized by existing County ordinances or resolutions, the Payment shall be reduced by the amount any revenues received by the County prior to the Payment Date as a result of such fee. Hidden Hills Solar shall pay all other Project

related fees and costs to the County in the same manner and amount as charged to other developers and as required by County Code, ordinances and/or resolutions and the Payment shall not be reduced by the amount of such fees and costs paid by the Project.

1.4 Calculation of Payment. Not later than 60 days prior to the Payment Date, the County will provide Hidden Hills Solar with a written notice of the amount of the Payment together with an itemization of any credits against the Payment as provided in 1.3. Within 30 days of receipt of the notice, Hidden Hills Solar shall notify the County if it objects to the amount of the payment and its reasons for such an objection. Within 10 days of receipt of such notice, County and Hidden Hills Solar shall meet and confer in a good faith attempt to resolve the objections. By the Payment Date, Hidden Hills Solar shall pay to the County the amount specified in the County's notice or, if the parties have agreed upon a different amount, the amount agreed upon.

ARTICLE 2
OLD SPANISH TRAIL HIGHWAY MITIGATION MEASURES

2.1 Agreed Upon Mitigation Measures. As provided below, the parties agree to the following mitigation measures and will further recommend to the CEC that it include as final conditions of certification the mitigation measures described in this Article.

2.2.2 Old Spanish Trail Highway Mitigation. The road to the west of the Project site and terminating at California State Highway 127 is called the "Old Spanish Trail Highway." The parties agree to develop and jointly submit to the CEC proposed Conditions of Certification (hereinafter "COC") which COCs are intended to prevent project-related heavy truck traffic on that portion of Old Spanish Trail Highway between the Project site and California State Highway 127. The mechanisms agreed to and that will be jointly recommended to the CEC for inclusions of the final conditions of certification to prevent heavy truck traffic from utilizing that portion of Old Spanish Trail Highway is as follows:

2.2.2(a) Heavy Truck Traffic During Construction: During the period between the Commencement of Construction and the Commencement of Operation of the Project, Hidden Hills Solar shall pay a per truck penalty of $10,000.00 for each heavy truck which uses the portion of Old Spanish Trail Highway between California State Highway 127 and the Project site to deliver materials to the Project or to return after delivering materials to the Project site. Further, Hidden Hills Solar shall be required to reimburse the County for the cost of repairing any damage caused to Old Spanish Trail Highway by such truck use. Such reimbursement shall be made to the County within 30 days of receipt by Hidden Hills Solar of an invoice from the County for the cost of such repairs, as provided for in Section 2.1.2(d), below.

2.2.2(b) Heavy Truck Traffic During Operations: Following the Commencement of Operations of the Project, Hidden Hills Solar shall pay a per truck penalty of $10,000.00 for each heavy truck which uses the portion of Old Spanish Trail Highway between California State Highway 127 and the Project site to deliver materials to the Project or to return after delivering materials to the Project site. Hidden Hills Solar shall not be required to reimburse the County for the cost of repairing any damage caused to Old Spanish Trail Highway by such truck use.

2.2.2(c) Workforce Traffic During Construction: During the period between the Commencement of Construction and the Commencement of Operation of the Project, Hidden Hills Solar shall be required to reimburse the County for the cost of repairing any damage caused to Old Spanish Trail Highway by workforce traffic use. Prior to the Commencement of Construction, Hidden Hills Solar shall document the condition of the roadway, as provided for in COC Trans-3, which shall be shared with the County. The County shall inform Hidden Hills Solar of any damage in need of repair and invoice the cost of the repair to Hidden Hills Solar. Reimbursement shall be made to the County within 30 days of receipt by Hidden Hills Solar of the invoice.

2.2.2If the County believes that a heavy truck has used the portion of Old Spanish Trail Highway between California State Highway 127 and the Project site to deliver materials to the Project or to return after delivering materials to the Project site, within 10 days of learning of such use, the County shall provide an invoice for the penalty together with a written notice to Hidden Hills Solar providing the date and time of such use and, to the extent possible, a description of the heavy truck and the actual or expected costs of any repairs to the road caused by the heavy truck use. Within 15 days of the receipt of such notice, Hidden Hills Solar shall notify the County if it objects to the penalty and/or to the amount of the repair costs together with its reasons for such an objection. Within 10 days of receipt of such notice, County and Hidden Hills Solar shall meet and confer in a good faith attempt to resolve the objections. If Hidden Hills Solar and the County are unable to resolve the objection, the Compliance Project Manager ("CPM") shall make the final determination. As appropriate, within 10 days of the an agreement at a meet and confer meeting, or within 10 days of a CPM decision, Hidden Hills Solar shall pay to the County any penalty and repair costs specified by the CPM or, if the parties have agreed upon a different amount, the amount agreed upon.

2.2.3 Other Highway-Related Mitigation Measures: The parties hereby agree to Conditions of Certification Trans-1 through Trans-9 in the form recommended in the Preliminary Staff Assessment, as amended herein, and shall recommend that the CEC include those conditions as final conditions of certification.

2.4 Enforcement of Mitigation. The parties agree that the mitigation measures described in this Article 2, shall be binding and enforceable notwithstanding whether such conditions are included as conditions of certification in the final order of the CEC granting the application for certification.

ARTICLE 3
ACKNOWLEDGEMENT OF MITIGATION OF CERTAIN IMPACTS

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TERM

4.1 The term of this Agreement shall be until the decommissioning of the Project.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first set forth above by their duly authorized representatives as follows:

HIDDEN HILLS SOLAR I, LLC
By: Hidden Hills Solar Holdings, LLC, its sole member
By: BRIGHTSOURCE ENERGY, INC., its sole member
By: _____
Name: _____
Title: _____

HIDDEN HILLS SOLAR II, LLC
By: Hidden Hills Solar Holdings, LLC, its sole member
By: BRIGHTSOURCE ENERGY, INC., its sole member
By: _____
Name: _____
Title: _____

COUNTY OF INYO
[Signature block]

DECEMBER 11, 2012

INYO COUNTY BOARD OF SUPERVISORS

AGENDA ITEM 20

ATTACHMENT C

ATTACHMENT C
County Socioeconomic
Letter to CEC

KEVIN D. CARUNCHIO
County Administrative Officer

TEL: (760) 878-0292
FAX: (760) 878-2241
E-mail: kcarunchio@inyocounty.us

COUNTY OF INYO

ADMINISTRATOR'S OFFICE
P. O. Drawer N
INDEPENDENCE, CALIFORNIA 93526

February 16, 2012

Mike Monasmith, Project Manager
Amanda Stennick, Planner III/Supervisor
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5112

SUBJECT: Hidden Hills Solar Energy Generating System Project
Socio-Economic Impacts to Inyo County

Dear Mr. Monasmith and Ms. Stennick:

Forwarded with this letter are preliminary estimates of the fiscal impacts of the construction and operation of the proposed Hidden Hills Solar Electric Generating System (HHSEGS), prepared by nine (9) Inyo County departments, with the assistance of the County's economists, Gruen Gruen + Associates (GG+A). The estimates are preliminary because the information the County has received to date about the construction and operation of the proposed project is not complete. As a result, the departments have had to rely solely on the information contained in the Application for Certification (AFC) to the California Energy Commission, and clarifying information regarding that application supplied by CH2MHill in response to questions from GG+A.

For example, the County Sheriff prepared his estimates without access to a security plan for the proposed project or information about what the project's sponsor had agreed to contribute to the cost of facilities, such as an emergency response center that would be needed for the Sheriff's Office to fulfill its responsibilities. (Please note that also enclosed with this correspondence are responses from the Inyo County Sheriff's Office in regard to your September 30, 2011 letter to Undersheriff Keith Hardcastle and the associated law enforcement needs assessment form.)

We were also unable to obtain any information about the proportion of the considerable heavy truck traffic likely to come from the California and Nevada sides of the project; in its present condition, The Old Spanish Trail, an historic, key road to the project is simply not able to handle the traffic that will be induced by the project and will deteriorate rapidly if it is not reconstructed in advance of the commencement of construction activities related to the project.

Rather than wait until the County had all the information about the relevant aspects of the construction and operation phases of the project, the County departments have made what we believe are reasonable assumptions about the demand for the construction and maintenance of public facilities, as well as the required public services that will be induced by the proposed project's construction and operation. As discussed in the accompanying correspondence that summarizes the cost estimates, some of the work by County agencies and departments will have to begin before project construction starts.

As those members of your staff who have visited Charleston View know, the area where the proposed project will be sited is sparsely populated, and presently only very lightly served by County agencies and departments from offices and stations located at significant distances from the site. For the most part, Charleston View is not yet a place where the marginal costs of providing public services to a large and expensive project are relatively low. Access to necessary public services cannot yet be provided by simply making small additions to an existing base of public capital and personnel.

In the enclosed correspondence from County departments, the County departments estimated the initial costs that will be induced by the project during its construction, and the annual costs that will be induced during operation. A summary of these cost forecasts is presented in Table 1 below. If your staff or consultants have questions for the departments, please coordinate your questions through this office so we can avoid duplication and update our own data base with the answers you receive.

Table 1
Forecasts of Departmental Costs Induced by Construction and Operation of HHSEGS

Departments	Initial/ Construction	Ongoing Annual*	Comments
Health & Human Services		$188,115	
Assessor	$120,000	$120,000	Specialized appraisal requiring the retention of expert appraiser and tax counsel.
Sheriff	$2,130,966	$1,269,120	Closest substation is 34 miles away, and current staff serves 3,200 square miles west of the substation. See Law Enforcement Needs Assessment Form.
Public Works	$8,157,000	$78,500	Reconstruction of Spanish Trail and annual maintenance
Information Services	$237,600		Assumes 30 months of high speed data communications system
Agricultural	$150,000	50,000	Monitoring and control project targeted against introduction of invasive weeds
Waste Management	$156,000		Waste collection for 3 years from Tecopa RV Park and Charleston View area.
Motor Pool	$33,200		Lower of two estimates of trips during construction. May be as high as $66,000
Water Department	$145,000	$8,000	Estimate for creation of monitoring program and on-going monitoring costs.
Total	**$11,129,466**	**$1,713,735**	

*Annual costs shown are for the first year. They are estimated to increase at 5% per year.

Source: Information on the project's characteristics provided by the BrightSource AFC and additional information provided by CH2MHill in response to questions by Gruen Gruen + Associates

We have not completed our estimates of the costs associated with the opportunity for alternative use of the 3,277 acres and the adjoining lands that will be foregone with the construction of the project. As discussed in the AFC, "The Old Spanish Trail" and other portions of Charleston View are historic, and the area has significant environmental assets that are just beginning to attract some specialty visitors, such as eco-tourists and geologists. The project would occupy 3,277 acres of a 13,000-acre property that accounts for 8 percent of all remaining private land in Inyo County. While the availability of such a large parcel of privately owned land is unique, the Charleston View area has yet to reach an economic "take off point."

Development of the proposed project site is allowed by current County land use regulations to entitle the construction of housing on 170 parcels, but no construction is started and a wide variety of other options for the future use are likely to open up once electricity is brought to the area. Electricity will finally be coming to the area no later than next year, and the availability of that service will remove one major impediment to development. The other major impediment to future development is uncertainty concerning the availability of sufficient water to support major commercial, recreational or residential developments. Several years ago, a test well for water to serve a proposed residential development was started but not completed. Timing of development, which in this case would be a series of "no project alternatives" to the proposed project, is difficult to predict, but the County has asked its economist to work with the Inyo County Planning Department and your Commission on the necessary no-development forecasts.

Through separate correspondence, the County will be submitting recommendations for monitoring and protecting hydrologic resources in the area consistent with conditions the County has placed on other industrial developments in Inyo County, and what the County would likely require of the project applicant if not for the exclusive permitting jurisdiction of the California Energy Commission. Costs associated with the Inyo County Water Department involvement in monitoring hydrologic issues associated with the project, including any hydrologic mitigation program that may be adopted by the CEC, are included in this correspondence.

Because of the proposed HHSEGS project's physical characteristics, its completion would not only hinder any future alternative use of the site itself, but also the private lands around it, including the 9,500-acres of land around the site that are owned by the same lessor of the project site. The mirrors, 750-foot tower and other interference with the aesthetics and views in the area are a potential drag on the demand for neighboring uses, as is the potential hazard or perception of hazard from the high pressure gas lines and other project externalities.

While much work still needs to be done to obtain an understanding of the longer run opportunities that would be lost to the County's residential, employment and tax base, it is clear that the cost of these lost opportunities may be significant. We offer this correspondence, including the incorporated documentation, as a starting point for that analysis.

To assist us in being able to evaluate and more fully analyze the opportunity costs associated with the project, Inyo County requests that it be provided with a copy of the applicant's Power Purchase Agreement with Pacific Gas and Electric, as approved by the California Public Utilities Commission, as well as a copy of the applicant's lease agreement with the owner of the project site. Both documents are critical for the County and, we assume your agency, to fully evaluate the socioeconomic impacts of the project. If necessary to gain access to these documents, the County is agreeable to developing and entering into a confidentiality agreement to meet the needs of all involved parties.

In light of the California Energy Commission's sole jurisdiction for permitting the Hidden Hills Solar Energy Generating System project, Inyo County will look to the Commission to fully identify and mitigate the project's impacts on already-strained County programs and services, both during its construction and during its operation, including addressing opportunity costs associated with the project. The County appreciates the Commission's recognition of the applicability of Title 21 of the Inyo County Code to the project, and the requirements that ordinance places on projects such as the HHSEGS to fully analyze the socioeconomic impacts of the project in much more detail than otherwise required by the California Environmental Quality Act, as evidenced by the Commission's engagement of Aspen Consulting to assist in the preparation of a socioeconomic analysis. In order to avoid duplication of effort, and to ensure the resulting analysis meets the needs of the County pursuant to Title 21, we request you consider allowing GG+A to assist Aspen in the preparation of the socioeconomic analysis rather than relegating the County and GG+A to reviewing and commenting on Aspen's analysis after it is published.

As shown in the table above, the costs to the County greatly exceed the increased property taxes that the County will receive due to the construction of the project (approximately $300,000 per year according to the AFC) and the taxes are insufficient to support needed local improvements and services required to serve the project.

Thank you for your consideration of our preliminary analyses and requests. Please contact me directly if any aspect of this correspondence requires clarification or further discussion and I will gladly put you in contact with the appropriate County staff and/or representative. I understand that this memorandum addresses economic impacts which are being addressed by different Commission analyses. I am requesting that you forward this letter to each analyst addressing the impacted service areas for their consideration.

Sincerely,

Kevin D. Carunchio
County Administrative Officer
County of Inyo

KDC/dg
Enclosures

cc: Inyo County Board of Supervisors
Inyo County Health and Human Services
Inyo County Assessor
Inyo County Sheriff
Inyo County Public Works
Inyo County Information Services
Inyo County Agriculture
Inyo County Waste Management
Inyo County Motor Pool
Inyo County Water Department
Gruen Gruen + Associates

dg/Admin/HiddenHills.Socioeconomic.LtrCEC