



**JOSHUA BASIN WATER DISTRICT
SPECIAL MEETING OF THE BOARD OF DIRECTORS
WEDNESDAY, AUGUST 10, 2016 6:30 PM
61750 CHOLLITA ROAD, JOSHUA TREE, CALIFORNIA 92252**

AGENDA

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **DETERMINATION OF A QUORUM**
4. **APPROVAL OF AGENDA**
5. **PUBLIC COMMENT**

Members of the public may address the Board at this time with regard to matters within the Board's jurisdiction that are not listed on the agenda. State law prohibits the Board of Directors from discussing or taking action on items not included on the agenda. Members of the public will have the opportunity for public comment on any item listed on the agenda when it is addressed on the agenda. Please limit comments to three (3) minutes or less.
6. **CONSENT CALENDAR**

Items on the Consent Calendar are considered routine in nature and will be adopted in total by one action of the Board of Directors unless any Board Member or any individual or organization interested in one or more consent calendar items wishes to be heard.

 - A. Approve Draft Minutes of the July 20, 2016 Regular Meeting of the Board of Directors.
 - B. Approve Draft Minutes of the July 26, 2016 Special Meeting of the Board of Directors.
 - C. Approve Investment Policy – Susan Greer. Assistant General Manger
7. **PRESENTATION FROM MORONGO BASIN CONSERVATION ASSOCIATION – DESERT WISE LANSCAPING TOUR, SPRING 2016**

Recommend that the Board receive information from Claudia Saul of MBCA for information only.
8. **UPDATE ON NEXTERA SOLAR PROJECT, PROPOSED WILL SERVE LETTER AND WATER SUPPLY AGREEMENT-** Contingent upon final approval of the Project by the County, recommend that the Board authorizes the General Manager to execute the Will Serve Letter and Water Supply Agreement, as recently amended.

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9. **STANDING COMMITTEE REPORTS**
 - A. **FINANCE COMMITTEE MEETING:** President Fuller and Director Johnson. Next Meeting is scheduled for August 29, 2016 9 a.m. to 10 a.m.
 - B. **WATER RESOURCES & OPERATIONS COMMITTEE:** Vice President Luckman and Director Johnson. Next Meeting is scheduled for August 29, 2016 10 a.m. to 11 a.m.
10. **DISTRICT GENERAL COUNSEL REPORT**
11. **FUTURE DIRECTOR MEETINGS AND TRAINING OPPORTUNITIES**
 - **ASBCSD – (Reminder) No Meeting for August**
 - **Mojave Water Agency Board of Directors – August 11, 2016- Victoria Fuller**
 - **San Bernardino County Water Conference – August 12, 2016**
12. **DIRECTOR REPORTS ON MEETINGS ATTENDED, COMMENTS/FUTURE AGENDA ITEMS**
13. **ADJOURNMENT**

INFORMATION

The public is invited to comment on any item on the agenda during discussion of that item.

Any person with a disability who requires accommodation in order to participate in this meeting should telephone Joshua Basin Water District at (760) 366-8438, at least 48 hours prior to the meeting in order to make a request for a disability-related modification or accommodation.

Materials related to an item on this Agenda submitted to the Board of Directors after distribution of the agenda packet are available for public inspection in the District's office located at 61750 Chollita Road, Joshua Tree, California 92252 during normal business hours.

JOSHUA BASIN WATER DISTRICT
Minutes of the
REGULAR MEETING OF THE BOARD OF DIRECTORS

July 20, 2016

1. **CALL TO ORDER:** 6:30 PM

2. **PLEDGE OF ALLEGIANCE**

3. **DETERMINATION OF QUORUM:**

Victoria Fuller	Present
Bob Johnson	Present
Mickey Luckman	Present
Mike Reynolds	Present
Rebecca Unger	Present

STAFF PRESENT:

Curt Sauer, General Manager
Susan Greer, Assistant General Manager/Controller
Keith Faul, GIS Coordinator
Seth Zielke, Director, Water Resources and Operations

CONSULTANTS PRESENT:

Kathleen Radnich, Public Outreach Consultant
Gil Granito, District Counsel, Redwine & Sherrill
Gerry Eagans, Redwine & Sherrill

GUESTS 7

4. **APPROVAL OF AGENDA – MSC/ Johnson/Reynolds 5/0 to approve the Agenda.**

Fuller	Aye
Luckman	Aye
Johnson	Aye
Reynolds	Aye
Unger	Aye

5. **PUBLIC COMMENT - None**

6. **CONSENT CALENDAR:**

Items on the Consent Calendar are considered routine in nature and will be adopted in total by one action of the Board of Directors unless any Board Member or any individual or organization interested in one or more consent calendar items wishes to be heard.

- A. Approve Draft Minutes of the July 6, 2016 Regular Meeting of the Board of Directors.
- B. Approve Draft Minutes of the July 11, 2016 Special Meeting of the Board of Directors.

MSC/ Johnson/Unger 5/0 to approve the July 6, 2016 and July 11, 2016 Minutes of the Board of Directors.

Fuller	Aye
Luckman	Aye
Johnson	Aye
Reynolds	Aye
Unger	Aye

7. **UPDATE ON NEXTERA SOLAR PROJECT/WILL SERVE LETTER/WSA/INDEMNITY**

At 7:02 p.m. the BoD adjourned to read the document. At approximately 7:15 p.m. the BoD returned to regular session. General Manager Sauer reported on the changes to the Will Serve letter and the Water Supply Agreement. GM Sauer also explained the Indemnity Agreement that would be executed upon approval of the Project by San Bernardino County.

Recommendation to the BoD to proceed with the Will Serve Letter and Water Supply Agreement upon the condition that NextEra executes the Indemnity Agreement.

Gerry Eagans, Legal Counsel clarified to the BoD the action that the General Manager is asking for today, is for the Will Serve Letter and the Water Supply Agreement to become effective upon the final approval of the County of San Bernardino. Not with standing if there is a law suit filed after the approval. The Will Serve Letter will be effective on the date that the County of San Bernardino approves the Project.

PUBLIC COMMENT

David Ficke, Joshua Tree stated that it is too soon and since there are (3) appeals he doubts that the Project will survive the appeal process.

MSC/Reynolds/Unger 4/1 to table the BoD decision until August 8, 2016

Fuller	Aye
Luckman	No
Johnson	Aye
Reynolds	Aye
Unger	Aye

8. **2015/2016 BAD DEBT WRITE-OFF**

Recommend that the Board accept and file.

Assistant General Manager Susan Greer reported that the total bad debt has been reduced again this year, both in number of accounts being written off as well as the total amount. She also asked the BoD to consider an increase of the guarantee/deposit for new customers with red/poor credit.

PUBLIC COMMENT- None

MSC/ Reynolds/Luckman 5/0 to approve bad debt write-off and to have the Finance Committee review the guarantee/deposit and report back to the Board.

Fuller	Aye
Luckman	Aye
Johnson	Aye
Reynolds	Aye
Unger	Aye

9. **ADOPT RESOLUTION 16-964- A RESOLUTION OF THE BOARD OF DIRECTORS OF THE JOSHUA BASIN WATER DISTRICT ESTABLISHING THE APPROPRIATION LIMIT OF THE DISTRICT FOR THE FISCAL YEAR 2016/2017**

Recommend that the Board adopt Resolution 16-964

Assistant General Manager Susan Greer explained to the BoD the appropriation limit calculation for the fiscal year 16/17. She also stated that the purpose of the Limit is to place an annual limit or restriction on the growth of tax-funded programs and services.

PUBLIC COMMENT - None

MSC/ Reynolds/Luckman 5/0 to adopt Resolution 16-964

Fuller Aye
Luckman Aye
Johnson Aye
Reynolds Aye
Unger Aye

10. STANDING COMMITTEE REPORTS:

- A. FINANCE COMMITTEE MEETING: President Fuller and Director Johnson. Next Meeting is scheduled for July 25, 2016 9 a.m. to 10 a.m.
- B. WATER RESOURCES & OPERATIONS COMMITTEE: Vice President Luckman and Director Johnson. Next Meeting is scheduled for July 25, 2016 10 a.m. to 11 a.m.
- C. LEGISLATIVE AND PUBLIC INFORMATION COMMITTEE: Vice President Luckman and Director Unger: Kathleen Radnich, Public Outreach Consultant to report. Next meeting is scheduled for August 3, 2016.

The Board approved time changes for July 25, 2016 Finance Committee to start at 10:00 a.m. (original time 9:00 a.m.) and the Water Resources and Operations Committee to start at 11:00 a.m. (original time 10:00 a.m.).

11. **DISTRICT GENERAL COUNSEL GIL GRANITO** – Commented on Assembly Bill 401 which requires the State Board, no later than January 1, 2018, in collaboration with the State Board of Equalization to develop a plan for the funding and implementation of the Low-Income Water Rate Assistance Program.
12. **GENERAL MANAGER REPORT** – GM Sauer reported to the BoD that Patricia Freeman would be leaving the District to accompany her husband, who has been assigned back East. GM Sauer and Assistant GM Susan Greer have been working on Union negotiation items and expect the Grant/Financial Assistance packet to be approved by SWRCB in September. The BOR pilot study concerning Reduction, Coagulation and Filtration commenced this week. GM Sauer stated that the JBWD is currently in discussions with BLM concerning the ROW rental fees and are waiting on a “next steps” letter from the BLM field office in Barstow.
13. **FUTURE DIRECTOR MEETINGS AND TRAINING OPPORTUNITIES**
- Mojave Water Agency – July 28 – Victoria Fuller
 - ASBCSD – (Reminder) No Meeting for August
 - San Bernardino County Water Conference – August 12, 2016
14. **DIRECTOR REPORTS ON MEETINGS ATTENDED, COMMENTS/FUTURE AGENDA ITEMS**
14. **ADJOURNMENT**

MSC Unger/Luckman 5/0 to adjourn the Regular Meeting of the Board of Directors of July 20, 2016 at 8:27 p.m.

Fuller Aye
Luckman Aye
Johnson Aye
Reynolds Aye
Unger Aye

Respectfully submitted:

Curt Sauer, GM and Board Secretary

JOSHUA BASIN WATER DISTRICT
Minutes of the
SPECIAL MEETING OF THE BOARD OF DIRECTORS

July 26, 2016

1. **CALL TO ORDER:**

9:00 AM

2. **PLEDGE OF ALLEGIANCE**

3. **DETERMINATION OF QUORUM:**

Victoria Fuller	Present
Bob Johnson	Present
Mickey Luckman	Conferenced in
Mike Reynolds	Present
Rebecca Unger	Present

STAFF PRESENT:

Curt Sauer, General Manager
Susan Greer, Assistant General Manager/Controller
Sarah Johnson, Human Resources/Contracts Administrator

CONSULTANTS PRESENT:

Steve Berliner, Legal Counsel – Conferenced in
0

GUESTS

4. **APPROVAL OF AGENDA – MSC/ Luckman/Fuller 5/0 to approve the Agenda.**

Fuller	Aye
Luckman	Aye (by conference call)
Johnson	Aye
Reynolds	Aye
Unger	Aye

5. **PUBLIC COMMENT - None**

6. **CLOSED SESSION –**

As required by Government Code Section 54956.9 (e) (2), the record should reflect that at this time the Board will go into Closed Session pursuant to Government Code Section 54956.9 to conference with the District's designated Labor Negotiators (Curt Sauer, General Manager and Susan Greer, Assistant General Manager) with Labor Counsel Steve Berliner pursuant to Government Code Section 54957.6 regarding labor negotiations pertaining to represented employees of the District (AFSCME Local 92).

MSC Fuller /Luckman 5/0/0 to adjourn to closed session at approximately 9:02 a.m.

Fuller	Aye
Luckman	Aye (by conference call)
Johnson	Aye
Reynolds	Aye
Unger	Aye

REPORT ON CLOSED SESSION- Closed session ended at approximately 9:35 a.m. with no reportable action taken.

7. ADJOURNMENT

MSC Reynolds /Fuller 4/0/0 to adjourn the Special Meeting of the Board of Directors of July 26, 2016 at 9:35 a.m.

Fuller	Aye
Luckman	Conference call had ended before the vote.
Johnson	Aye
Reynolds	Aye
Unger	Aye

Respectfully submitted:

Curt Sauer, GM and Board Secretary

DRAFT

JOSHUA BASIN WATER DISTRICT
SPECIAL MEETING AGENDA REPORT

Meeting of the Board of Directors

August 10, 2016

Report to: President and Members of the Board

Prepared by: Susan Greer 

TOPIC:
APPROVE INVESTMENT POLICY

RECOMMENDATION:
Approve the Investment Policy

ANALYSIS:

This is a routine matter, requiring the District to annually re-approve the investment policy as required by the Government Code. The Code no longer requires it, but the District continues to prepare a quarterly investment report, which details the District's investments and earnings. These requirements were enacted in response to the Orange County bankruptcy matter many years ago in which the County Board of Supervisors was unaware of the questionable investments made by the County Treasurer. The Government Code declares that each person, treasurer, or governing body authorized to make investment decisions act with care, skill, prudence and diligence when handling funds. Further, the primary objective of any person investing public funds is to safeguard principal; secondly to meet liquidity needs; and lastly, to achieve a return or yield on invested funds.

No changes from the last investment policy have been proposed. At this time, all investments are maintained at LAIF (the state of California Local Agency Investment Fund).

The attached investment policy is contained within the District's Administration Code, and the document is changed to reflect the date of this meeting, wherein the investment policy is re-approved.

STRATEGIC PLAN ITEM:
N/A

FISCAL IMPACT:
None

ARTICLE 8

INVESTMENT POLICY

8.01 The Board of Directors of the Joshua Basin Water District hereby adopt an Investment Policy as follows. Any surplus funds or funds held for any length of time for special projects shall only be invested in the following with reputable institutions.

8.01.01 Direct and general obligations (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America) of the United States of America, or obligations that are unconditionally guaranteed as to principal and interest by the United States of America, including (in the case of direct and general obligations of the United States of America) evidences of ownership of proportionate interests of such obligations. Investments in such proportionate interests must be limited to circumstances wherein;

(a) a bank or trust company acts as custodian and holds the underlying United States obligations;

(b) the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor of the underlying United States obligations and is a corporation rated A or better by Standard & Poors Corporation (S&P) or the equivalent rating by another recognized rating agency; and

(c) the underlying United States obligations are held in a special account, segregated from the custodian's general assets and are not available to satisfy any claim of the custodian, any person claiming through the custodian, or any person to whom the custodian may be obligated (the obligations described in this paragraph are referred to herein as "United States Obligations").

8.01.02 Obligations issued or guaranteed by the following instrumentalities or agencies of the United States of America:

- (a) Federal Home Loan Bank system;
- (b) Export-Import Bank of the United States;
- (c) Federal Financing Bank;
- (d) Government National Mortgage Association;
- (e) Farmers Home Administration;
- (f) Federal Home Loan Mortgage Company;
- (g) Federal Housing Administration;

- (h) Private Export Funding Corp;
- (i) Federal National Mortgage Association;
- (j) Federal Farm Credit Bank;
- (k) Maritime Administration; and
- (l) Public Housing Corporation.

8.01.03 Pre-refunded municipal obligations meeting the following conditions:

(a) the bonds are

(i) not to be redeemed prior to maturity or the applicable trustee has been given irrevocable instructions concerning their calling and redemption, and

(ii) the applicable issuer has covenanted not to redeem such bonds other than as set forth in such instructions;

(b) the bonds are secured by cash or United States Obligations that may be applied only to interest, principal, and premium payments of such bonds;

(c) the principal of and interest on the United States Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the bonds;

(d) The United States Obligations serving as security for the bonds are held by an escrow agent or trustee that has a combined capital and surplus of not less than \$50,000,000 and is either subject to supervision or examination by federal or state authority or that is rated A or better by S&P or the equivalent rating by another recognized rating agency;

(e) the United States Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and

(f) the municipal obligations are rated AAA by S&P or the equivalent rating by another recognized agency.

8.01.04 Direct and general long-term obligations of any state, to the payment of which the full faith and credit of the state is pledged and that are rated in any of the three highest rating categories by S&P or the equivalent rating by another recognized rating agency.

8.01.05 Direct and general short-term obligations of any state, to the payment of which the full faith and credit of the state is pledged and that are rated in any of the three highest rating categories by S&P or the equivalent rating by another recognized rating agency.

8.01.06 Interest-bearing demand or time deposits or interests in money market portfolios issued by state banks or trust companies or national banking associations that are members of the Federal Deposit Insurance Corporation (FDIC). These deposits or interests must be continuously and fully insured by FDIC and with banks that are rated at least A or better by S&P or the equivalent rating by another recognized rating agency.

8.01.07 Long-term and medium-term corporate debt guaranteed by any corporation that is rated by S&P or the equivalent rating by another recognized rating agency in its three highest rating categories.

8.01.08 Repurchase agreements, the maturities of which are 30 days or less, entered into with financial institutions such as banks or trust companies organized under state law or national banking associations, insurance companies or government bond dealers reporting to, trading with, and recognized as primary dealers by the Federal Reserve Bank of New York and members of the Security Investors Protection Corporation or with dealers or parent holding companies. The financial institutions, dealers, or parent holding companies must be rated at least A or better by S&P or the equivalent rating by another recognized rating agency. If it is a parent holding company that has the required S&P rating or the equivalent rating by another recognized rating agency, then the counterparty must have combined capital and surplus not less than \$50,000,000. If the counterparty is a parent holding company, then the agreement must be unconditionally guaranteed by a financial institution subsidiary with a combined capital and surplus not less than \$50,000,000. The repurchase agreement must be secured by United States Obligations. The United States Obligations must have a fair market value, exclusive of accrued interest, at least equal to the amount invested in the repurchase agreements. The Trustee (who shall not be the provider of the collateral) must have a perfected first lien in, and retain possession of, the collateral. The obligations serving as collateral must be free from all third party liens.

8.01.09 Prime commercial paper of a United States corporation, finance company or banking institution rated in any of the two highest rating categories of S&P or the equivalent rating by another recognized rating agency.

8.01.10 Public housing bonds issued by public agencies. Such bonds must be fully secured by a pledge of annual contributions under a contract with the United States government; temporary notes, preliminary

loan notes or project notes secured by a requisition or payment agreement with the United States; or state or public agency or municipality obligations; provided that all of the above investments are rated in the three highest rating categories by S&P or the equivalent rating by another recognized rating agency.

8.01.11 Shares of a diversified open-end management investment company (as defined in the Investment Company Act of 1940) or shares in a regulated investment company (as defined in Section 851(a) of the Internal Revenue Code of 1986, as amended) that is (A) a money market fund that has been rated in the highest rating category by S&P or the equivalent rating by another recognized rating agency, or (B) a money market account of the Trustee or any state or federal bank that is rated A or better by S&P or the equivalent rating by another recognized rating agency or that has a combined capital and surplus of not less than \$50,000,000.

8.01.12 Units of a money market portfolio rated Am or Am-g by S&P or the equivalent rating by another recognized rating agency composed solely of obligations rated Am-g or better by S&P or the equivalent rating by another recognized rating agency having a federal income tax exclusion.

8.01.13 Tax-exempt obligations rated in any of the three highest rating categories by S&P or the equivalent rating by another recognized rating agency.

8.01.14 Units of a taxable government money market portfolio rated at least Am or Am-g by S&P or the equivalent rating by another recognized rating agency composed solely of obligations issued or guaranteed as to payment of principal and interest by the full faith and credit of the United States Government or repurchase agreements collateralized by such obligations.

8.01.15 Certificates of deposit issued by commercial banks, savings and loan associations and mutual savings banks rated A or better by S&P or the equivalent rating by another recognized rating agency and properly secured at all times by collateral security described in paragraphs (1) and (2) above.

8.01.16 The following investments fully insured by the Federal Deposit Insurance Corporation: (a) certificate of deposit, (b) savings accounts, (c) deposit accounts, (d) depository receipts of banks.

8.01.17 Local Agency Investment Fund

Investment Policy Approved August 3, 2016.

JOSHUA BASIN WATER DISTRICT
MEETING AGENDA REPORT

Meeting of the Board of Directors

August 10, 2016

Report to: President and Members of the Board

Prepared by: Curt Sauer

TOPIC: Update on NextEra Solar Project, Proposed Will Serve Letter and Water Supply Agreement

RECOMMENDATION: Contingent upon final approval of the Project by the County, the Board authorizes the General Manager to execute the Will Serve Letter and Water Supply Agreement, as recently amended.

ANALYSIS:

After considerable discussions on this topic we are currently at a place where:

- The County has issued a well permit to the current land owner which transfers with ownership of the land
- The County Planning commission approved the project, 4 to 1
- Project Appeals are scheduled to be heard by Board of Supervisors on August 9
- If the project is not approved, the proposed Will Serve Letter and Water Supply Agreement would be null and void
- If the project is approved, water could be supplied by the District OR a production well will be drilled by NextEra.

My recommendation is that the Board approves the issuance of the Will Serve Letter and the Water Supply Agreement, upon approval of the project by the County. That is the best way to position the District to protect the aquifer(s) while generating revenue for the District.

These documents would commit the District to supplying water to the project only if the Project is approved by the County.

These documents would commit the District to supplying water to the project only if the Project lands are owned by NextEra.

In response to potential litigation by the Coalition for Responsible Solar , we have worked with NextEra to put in place the indemnity agreement included in this board packet, whereby NextEra will cover all legal costs, as well as certain other costs, expenses and liabilities of the District should such a law suit be brought.

By approving the proposed Will Serve and Water Supply Agreement, if the project is approved by the County, NextEra would pay for water service at the prevailing rate similar to that charged to other customers. In addition, the WSA provides that NextEra would agree to provide the funds necessary to replenish the groundwater basin in order to fully offset the impact to the aquifer from the Project.

Finally, NextEra would be precluded from using water from a well on the Project site or on any adjacent property for the Project except in those instances when the District may be unable to provide the water as set forth in the WSA.

My recommendation to the Board is to proceed with the Will Serve and Water Supply Agreement included in this board packet upon the condition that NextEra executes the indemnity agreement also included in the board packet.

FISCAL IMPACT: \$70,000 estimated in revenue for the construction phase. Approximately \$46,000 estimated revenue to be used to buy SWP water, to be recharged to the Joshua Tree subbasin.



P.O. BOX 675 - 61750 CHOLLITA ROAD - JOSHUA TREE - CALIFORNIA 92252
TELEPHONE (760) 366-8438 • FAX (760) 366-9528
WEBSITE www.jbwd.org • E-MAIL customerservice@jbwd.com

August 10, 2016

Joshua Tree Solar Farm, LLC
c/o NextEra Energy Resources, Inc.
Attn: Jess Melin, Project Developer, Business Development
700 Universe Blvd.
Juno Beach, Florida 33408

Re: Will Serve Commitment
APN: 060723119 and 607-364-06 (collectively, "Property")

Dear Mr. Melin:

JT Solar Farm, LLC, a Delaware limited liability company ("JT Solar") proposes to construct and operate a twenty (20) megawatt alternating current solar photovoltaic generation facility on the Property ("Project"). JT Solar anticipates that the Project will require: (1) approximately thirty-four (34) acre feet of water during construction of the Project; (2) approximately two (2) acre feet of water per year for the first twenty (20) year period to operate the Project; and (3) approximately twelve (12) acre feet of water to decommission the Project.

NextEra Energy Resources, Inc. ("NextEra"), an affiliate of JT Solar previously requested a will serve letter for the Project. On or about October 23, 2015 Joshua Basin Water District ("District") issued a conditional will serve letter to NextEra for the Project ("Conditional Will Serve Letter"). Since that time, JT Solar has sought to establish more certainty regarding the service of water to the Project, and as such, JT Solar has requested that District issue this will serve letter in the place and stead of the Conditional Will Serve Letter.

This letter constitutes a will serve commitment ("Commitment") by District to provide potable water necessary for the Project. The terms and conditions of the Commitment are as follows:

(1) The Commitment shall become effective upon the issuance by the County of San Bernardino ("County") of its final discretionary approval for the Project ("Project Approval). In the event the County does not issue the Project Approval within nine (9) months from the date of this letter the Commitment shall expire. Upon expiration of the Commitment JT Solar must submit a new application for a new Commitment to the District for review and approval.

(2) The Commitment shall expire sixty (60) days after the Project Approval unless JT Solar executes the Water Supply Agreement in the same form and content as attached hereto as Exhibit "A" and by this reference incorporated herein. In connection therewith, JT Solar must be

the sole owner of the Property at the time the Water Supply Agreement is executed. JT Solar shall provide District with such proof of ownership as District shall reasonably require.

(3) JT Solar shall, at its sole cost and expense, apply for and obtain all necessary consents, approvals, permits and authority as shall be required for the construction, installation and operation of the Project.

(4) Concurrently with the execution of this Commitment by JT Solar, JT Solar shall execute the indemnification agreement in the same form and content as attached hereto as Exhibit "B" and by this reference incorporated herein.

All rights, privileges, and conditions of this Commitment are made to JT Solar and are not assignable or transferable to another owner or property, provided that JT Solar may assign this Commitment with the prior written consent of the District, which consent shall not be unreasonably withheld. The District reserves the right to impose further requirements, which it deems appropriate. Should you have any questions, please contact the undersigned. Upon the execution of this letter by JT Solar the Conditional Will Serve Letter will be null and void and of no further force and effect.

JOSHUA BASIN WATER DISTRICT

By: _____
Curt Sauer, General Manager

AGREED AND ACCEPTED BY:

JOSHUA TREE SOLAR FARM, LLC
a Delaware limited liability company

By: _____
Name: _____
Its: _____
Dated: _____

RECORDING REQUESTED BY
WHEN RECORDED RETURN TO

JOSHUA BASIN WATER DISTRICT
P.O. BOX 675
JOSHUA TREE, CA 92252
ATTN: Curt Sauer

NO FEE GOVT. CODE § 27383

(Space above this line for Recorder's use only)

Assessor's Parcel Numbers 607-231-19 and 607-364-06

WATER SUPPLY AGREEMENT

THIS WATER SUPPLY AGREEMENT ("Agreement") is made on this ____ day of _____, 2016 ("Effective Date"), by and between the JOSHUA BASIN WATER DISTRICT, a public agency of the State of California ("District") and JOSHUA TREE SOLAR FARM, LLC, a Delaware limited liability company ("JT Solar"). District and JT Solar are referred to in this Agreement collectively as the "Parties" and individually as a "Party."

RECITALS

A. JT Solar is the owner of certain real property located in County of San Bernardino, State of California and legally described on Exhibit "A" attached hereto and by this reference incorporated herein ("Property").

B. JT Solar proposes to construct and operate a twenty (20) megawatt alternating current solar photovoltaic generation facility on the Property ("Project").

C. JT Solar anticipates that the Project will require: (1) approximately thirty-four (34) acre feet of water for construction of the Project; (2) approximately two (2) acre feet of water per year for the first twenty (20) year period to operate the Project; and (3) approximately twelve (12) acre feet of water to decommission the Project at the end of the term.

D. On or about October 23, 2015 District issued a conditional will serve letter for the Project ("Will Serve Letter"). JT Solar desires more certainty with respect to the service of water to the Project than set forth in the Will Serve Letter. JT Solar shall deposit money with the District to purchase eight-six (86) acre feet of water ("Wholesale Water") from such sources as are available to District, including, but not limited to, Mojave Water Agency. After purchase of the Wholesale Water, it is the intent of District to recharge the Wholesale Water in one or more basins within the District's service area.

E. JT Solar is desirous of having District provide domestic water to the Project and District is willing to provide such water on the terms and conditions set forth herein.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Recitals listed above are incorporated into this Agreement as though fully set forth herein.
2. The term of this Agreement shall commence on the Effective Date and end forty (40) years thereafter ("Expiration Date").
3. Within ten (10) business days of the Effective Date, JT Solar shall deliver to District the sum of Forty-Five Thousand Nine Hundred Twenty-Four Dollars (\$45,924.00) ("Wholesale Water Purchase Payment") in immediately available funds (86 acre feet x \$534.00 per acre foot) to purchase the Wholesale Water, provided however, if the Mojave Water Agency water rate is less or more than Five Hundred Thirty-Four Dollars (\$534.00) on the Effective Date, the Wholesale Water purchase amount shall be eighty-six (86) acre feet times the amount Mojave Water Agency charges for Wholesale Water on the Effective Date. Notwithstanding the foregoing, the determination of when to purchase Wholesale Water and how, when and where the Wholesale Water shall be recharged shall be in District's sole and absolute discretion. After the deposit of the Wholesale Water Purchase Payment with the District as provided herein, JT Solar shall not be entitled to a refund of such amount or any portion thereof.
4. The physical point of delivery of domestic water service shall be at the interconnection approximately shown on Exhibit "B" attached hereto and by this reference set forth herein ("Interconnection"). The Interconnection shall be the point of delivery of water supplies provided under this Agreement. The District may make modifications to the Interconnection as it deems necessary to the prudent operation of the Interconnection and the District water system. The District previously installed a pipeline and appurtenant facilities from a main to the Interconnection. On or after the Effective Date, JT Solar shall execute the District's standard form application for water service ("Application") and shall pay such amounts as shall be required by the Regulations (as that term is defined herein). Within a reasonable time after the completion of the Application and payment of funds required by the Regulations, if any, District may install at the Interconnection a meter (the size of which shall be determined by the District) and such hydrants and appurtenances thereto as shall be required by the Regulations ("Facilities"), which Facilities shall be owned by the District. District shall invoice JT Solar for the Facilities along with the labor to install the same. JT Solar shall pay to District the sums shown on the invoice within ten (10) business days after the receipt thereof.
5. JT Solar shall be responsible for all costs and expenses incurred for the design, construction, operation and maintenance of all on-site water facilities on the JT Solar side of the meter. In addition thereto, JT Solar shall be responsible for the cost of operation, maintenance, modification, repair and/or replacement of the Interconnection and Facilities in accordance with the Regulations.
6. JT Solar shall, at JT Solar's sole cost and expense, be responsible for compliance with the California Environmental Quality Act ("CEQA") and all other applicable state and federal environmental laws and all federal and state requirements arising out of or in connection with the Project, including, without limitation, construction of on-site water facilities to be constructed hereunder and for compliance with all conditions and mitigation measures which must be

satisfied in connection with the same. As part of its obligation to fund the CEQA process, JT Solar shall prepare or cause to be prepared all instruments, documents, reports and other like or kind writings required to be prepared and/or filed by CEQA, provided, however, that the Parties acknowledge that the County of San Bernardino has conducted CEQA analysis of the Project in which the supply of water for the Project by the JBWD has been analyzed, and that the Parties further intend to rely upon such analysis to satisfy the requirements of CEQA as they might apply to this Agreement.

7. (a) District shall deliver up to eighty-six (86) acre feet of domestic water (“Minimum Quantity”) to the Property. During the months of July, August and September during the Construction Period (“Construction Months”), District has certain “Time of Use” restrictions from Southern California Edison (“SCE”). Should the demand for water from the Project require District to operate electrical pumping equipment during the Construction Months within a Time of Use period, JT Solar is willing and hereby agrees to pay any and all costs of SCE arising out of or in connection with District pumping equipment being operated in the Time of Use restricted period. District shall add such amount to a payment invoice after such amount has been reasonably determined by the District. The Parties agree that JT Solar shall be required to pay for additional Wholesale Water in ten (10) acre feet increments (“Ten Acre Feet Increment(s)”) after the District has delivered the Minimum Quantity or a Ten Acre Feet Increment to the Property. At or after the District has delivered the Minimum Quantity or a Ten Acre Feet Increment to the Property, District shall send written notice to JT Solar (“Deposit Notice”). The Deposit Notice shall provide that (i) District has delivered the Minimum Quantity or a Ten Acre Feet Increment to the Property, and (ii) JT Solar is required to pay to District an amount equal to ten (10) acre feet times the amount charged by Mojave Water Agency for wholesale water at the time of the Deposit Notice (“Additional Payment”). JT Solar shall, within thirty (30) days after receipt of the Deposit Notice, pay the Additional Payment to District. The District shall use such Additional Payments, when received, to purchase wholesale water. As set forth in Section 3 of this Agreement, the determination of when to purchase wholesale water with the Additional Payment and how, when and where such water shall be recharged shall be in District’s sole and absolute discretion.

(b) If by reason of Acts of God, earthquakes, droughts, floods, storms, explosions, fires, labor disputes, strikes, insurrection, war, riots, acts of the public enemy, or federal or state or local order, rule, or regulation, or any other cause outside of District’s control, District is prevented, in whole or in part, from the delivery of water to the Property, as provided herein, and provided that District has taken commercially reasonable, good faith efforts to deliver water to the Property notwithstanding any such event, then District may reduce delivery of water accordingly. If the force majeure event is system wide District may reduce delivery of water up to the same percentage the District reduces water delivery to its retail customers.

(c) The delivery of water may be suspended or curtailed in accordance with applicable law during any period of public emergency that is declared by District, provided that any such suspension or curtailment is reasonably related to such public emergency, and that the suspension or curtailment of water service is not disproportionate

to the suspension or curtailment of other water customers of the District during such public emergency.

(d) JT Solar shall not market, sell or make available the water provided hereunder to any person or entity within or without District's service area or sphere of influence, as amended from time to time, without first receiving the written approval of District, which approval may be withheld in District's sole and absolute discretion.

8. District will provide water to JT Solar at the Interconnection. The price for the water delivered by District shall be the same price charged by the District to its retail customers at the time water is delivered to the Property. If JT Solar uses water during the "Construction Period," JT Solar will pay the temporary water meter rate for such water. For purposes of this Agreement, the term "Construction Period" shall mean the period prior to the date all regulatory agencies permit the Project to be operated for the purpose set forth in Recital B above. JT Solar understands, acknowledges and agrees that District may, from time to time, increase its water rates and charges to its retail customers in accordance with California law. District will give JT Solar at least thirty (30) days notice prior to any increase of water rates. From time to time, District shall invoice JT Solar for water delivered to the Property and JT Solar shall pay to the District the sum shown in the invoice within ten (10) days after receipt thereof.

9. Except as otherwise provided herein, JT Solar shall comply with all District rules, regulations, ordinances, procedures and any like kind directives ("Regulations") with respect to water service, including, but not limited to, payment of applicable fees and charges in connection therewith. The provisions of the Regulations are incorporated herein by reference. Conversely, District will only provide service to the Project in accordance with the Regulations, as well as federal, state and local laws, rules, regulations, ordinances, and like directives, including restrictions related to the drought. In the event of a conflict between this Agreement and the Regulations, the Regulations shall control.

10. JT Solar shall, at its sole cost and expense, apply for and obtain all necessary consents, approvals, permits and authority as shall be required for the construction and installation of the Project and any on-site improvements described herein. JT Solar shall directly pay all costs associated with the construction of the on-site improvements (and any of them), including, but not limited to, furnishing of materials, and JT Solar shall keep District free and harmless from such costs.

11. District shall not be liable for the control, carriage, handling, use, disposal or distribution of water supplied or furnished under this Agreement past the Interconnection. District will not be liable for claims or damage of any nature whatsoever, including, but not limited to, property damage or personal injury, arising out of or connected with the control, carriage, handling, use, disposal or distribution of water supplied or furnished to JT Solar under this Agreement and JT Solar will indemnify, defend and hold harmless the District and its directors, officers, employees and agents from any such damage or claim of damages.

12. JT Solar hereby grants a perpetual non-exclusive easement to District in, on, over, under, upon, along and through the Property as may reasonably be required to construct, own, operate, maintain, replace, repair, enlarge, reconstruct, remove and improve the Facilities along with a

right of reasonable access to and from such easement for the purpose of exercising the rights granted herein.

13. (a) District makes the following representations, warranties and covenants to JT Solar:

(i) District has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained that District must obtain to provide water to the Property.

(ii) This Agreement constitutes a legal, valid and binding obligation of the District and is enforceable against the District in accordance with its terms.

(iii) Subject to the provisions set forth in this Agreement, after the Wholesale Water Purchase Payment as set for in paragraph 3 above, District shall provide up to eighty-six (86) acre feet of water required for Project construction, operation and decommissioning as detailed herein.

(b) JT Solar makes the following representations, warranties and covenants to District:

(i) JT Solar has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained that JT Solar must obtain to enter into this Agreement.

(ii) This Agreement constitutes a legal, valid and binding obligation of JT Solar and is enforceable against JT Solar in accordance with its terms.

14. This Agreement shall terminate and be of no further force and effect as of the Expiration Date.

15. The rights granted to JT Solar hereunder constitute the right to take domestic water only and shall not be interpreted as a sale, transfer or assignment of any of District's water rights.

16. JT Solar may, during the term of this Agreement, drill and outfit one (1) or more wells on the Property ("Wells"). JT Solar covenants and agrees that JT Solar will not construct any Wells on the Property, or the real property adjacent to the Property, inclusive of assessor parcel number 0607-364-06 ("Adjacent Property"), for purpose of providing water for the Project from the Wells on the Property or Adjacent Property for use on the Property, except for those instances where District cannot provide the water set forth in this Agreement. Nothing herein shall waive or release District's right to challenge the use of water for other purposes or for transport of water off the Property and/or Adjacent Property or for compliance with the Regulations and/or the District's groundwater management plan with respect to the drilling of the Wells and the Parties toll any statute of limitations or equitable claims, including laches in connection with the equitable claims.

17. Concurrently with the execution of this Agreement by JT Solar, JT Solar shall deliver to District a current preliminary report (“PR”) affecting the Property dated within thirty (30) days of the delivery thereof to District. The District will notify JT Solar of any title exceptions within the PR which must be subordinated to the lien of this Agreement. Notwithstanding the foregoing, any monetary liens or liens of any covenants, conditions and restrictions must be subordinated to the lien of this Agreement. JT Solar shall have a period of thirty (30) days after the receipt of written notice to cause the subordination of the items listed in District’s notice, as well as any monetary liens or liens of any covenants, conditions and restrictions.

18. (a) The following events shall be deemed to be acts of default (“Acts of Default”) by either Party under this Agreement regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency, or other proceeding which has or might have the effect of preventing such Party from complying with the terms of this Agreement:

(i) Failure to pay any sums to be paid hereunder within ten (10) days after written notice of such failure has been given to the defaulting Party;

(ii) Failure to comply in any material respect with any material term of this Agreement, other than the payment of sums to be paid hereunder, without curing such failure within ten (10) business days after written notice thereof if such failure can reasonably be cured within said ten (10) business day period; or if such failure cannot reasonably be cured within the ten (10) business day period, and such Party shall not have commenced to cure such failure within said period and shall not thereafter with reasonable diligence and good faith proceed to cure such failure;

(iii) Filing, or consent to the filing of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy by a Party, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; or a Party shall make an assignment for the benefit of creditors; or a Party shall consent to the appointment of a custodian, receiver, trustee, or other officer with similar powers, for substantially all of a Party’s property, or be adjudicated insolvent; or an order for relief shall be entered against a Party in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of all or any part of a Party’s property; or any petition for any such relief shall be filed against a Party and shall not be dismissed within forty-five (45) days.

(b) Upon the occurrence of any Act of Default, the non-defaulting Party may, at its option, and in addition to any other rights the non-defaulting Party may have at law or in equity, enforce, by all proper and legal suits and other means, its rights hereunder, including, without limitation, the collection of sums due hereunder, and should it be necessary for such Party to take any legal action in connection with such enforcement, the defaulting Party shall pay such Party all costs, including reasonable attorneys’ fees so incurred, all without prejudice to any remedies that might otherwise be used by either

Party for recovery of arrearage of sums due hereunder, damages as herein provided, or breach of covenant.

(c) Upon the occurrence of any Act of Default by JT Solar which results in a material failure by JT Solar to meet its payment obligations set forth in this Agreement, District may, at its election, within ten (10) business days after written notice of such Act of Default has been given to JT Solar, cease delivery of water service to the Property until such Act of Default is cured.

19. (a) All notices provided for hereunder shall be in writing and mailed (registered or certified, postage prepaid, return receipt requested), or by express carrier (return receipt requested) or hand delivered to the Parties at the addresses set forth below or at such other addresses as shall be designated by such Party and a written notice to the other Party in accordance with the provisions of this Section. All such notices shall, if hand delivered, or delivered by express carrier, be deemed received upon delivery and, if mailed, be deemed received three (3) business days after such mailing.

DISTRICT:

Joshua Basin Water District
Attention: General Manager
Post Office Box 675
Joshua Tree California 92252

JT Solar:

Joshua Tree Solar Farm, LLC
c/o NextEra Energy Resources, LLC
Attn: Joshua Tree Solar Business Manager
700 Universe Blvd.
Juno Beach, FL 33408

(b) This instrument, together with the exhibits attached hereto and other writings referenced herein, contains the entire agreement between the Parties relating to the subject matter hereof and supersedes any and all prior agreements between the Parties, oral or written, and any and all amendments thereto. Any oral representations or modifications concerning this instrument shall be of no force and effect, excepting a subsequent modification in writing, signed by the Parties to be charged.

(c) In the event of any litigation or other action between the Parties arising out of or relating to this Agreement or the breach thereof, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to its reasonable costs and attorneys' fees.

(d) If any provision of this Agreement shall be ruled invalid, illegal or unenforceable, the Parties shall: (i) promptly negotiate a substitute for the provision which shall, to the

greatest extent legally permissible, effect the intent of the Parties in the invalid, illegal or unenforceable provision, and (ii) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with subsection (i) above to give effect to the intent of the Parties without the invalid, illegal or unenforceable provision. To the extent the Parties are unable to negotiate such changes, substitutions or additions as set forth in the preceding sentence, and the intent of the Parties with respect to the essential terms of the Agreement may be carried out without the invalid, illegal or unenforceable provision, the balance of this Agreement shall not be affected, and this Agreement shall be construed and enforced as if the invalid, illegal or unenforceable provision did not exist.

(e) Each Party hereto agrees to execute and deliver such other documents and perform such other acts as may be necessary to effectuate the purposes of this Agreement.

(f) This Agreement is entered into within the State of California, and all questions concerning the validity, interpretation and performance of any of its terms or provisions or any of the rights or obligations of the Parties hereto shall be governed by and resolved in accordance with the laws of the State of California.

(g) The terms and provisions set forth in this Agreement shall be deemed provisions, terms and/or covenants running with the Property in accordance with applicable law and shall pass to and be binding upon the successor owners of the Property. This Agreement shall burden the Property and is binding upon the Parties and their successors, assigns and all persons acquiring ownership of any interest in, or any portion of the Property. This Agreement shall benefit the Property and inure to the benefit of the owners of the Property. As such, all successor owners of the Property will have any of the rights, responsibilities and liabilities of JT Solar, as if such person or entity originally executed this Agreement in place and stead of JT Solar. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to such terms and conditions regardless of whether such terms and conditions are set forth in such contract, deed or other instrument. No transfer of the Property shall relieve JT Solar of any responsibility or liability under this Agreement.

(h) The provisions of the Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question.

(i) Time is of the essence of this Agreement and each and every term and provision thereof.

(j) This Agreement shall be construed as if prepared by all of the Parties hereto. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived.

- (k) No delay on the part of any Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise of any other right, power or privilege hereunder.
- (l) Each individual executing this Agreement hereby represents and warrants that he or she has the full power and authority to execute this Agreement on behalf of the named Parties.
- (m) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.
- (n) If any amount due District hereunder is not paid when due, JT Solar shall pay to District an additional ten percent (10%) for each payment due as an administrative process charge. The Parties agree that this late charge represents a fair and reasonable estimate of the costs that District will incur by reason of late payment by JT Solar. Acceptance of any late charge shall not constitute a waiver of JT Solar's default with respect to the overdue amount or prevent District from exercising any of the other rights and remedies available to District. Any payment not paid when due shall bear simple interest at the rate of ten percent (10%) per annum (provided such amount shall not exceed the maximum rate allowed under California law) from the date due until paid in full.
- (o) The Parties agree that any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the State courts located in San Bernardino County, California, or the Federal court located in Riverside County, California and the Parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.
- (p) Nothing in this Agreement will be construed to create an association, company, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability.
- (q) This Agreement will not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successor, transferees and assignees and no other person or entity will be entitled to rely on or receive any benefit from this Agreement or any of its terms.
- (r) Each Party to this Agreement will indemnify, defend and hold harmless the other Party and its respective directors, officers, employees and agents from and against any and all liability, losses, claims, damages, expenses, demands, settlements and costs including, but not limited to, interest, penalties, attorneys' and expert witness fees, consulting fees and litigation costs of any nature arising out of the Party's performance under this Agreement and caused by any negligent act or omission, willful misconduct or

violation of law of or by the Party, or the Party's employees, agents, contractors and subcontractors.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first set forth above.

JT SOLAR:

JOSHUA TREE SOLAR FARM, LLC
a Delaware limited liability company

By: _____

Name: _____

Its: _____

DISTRICT:

JOSHUA BASIN WATER DISTRICT,
a public agency of the State of California

By: _____

Curt Sauer, General Manager

1 INDEMNIFICATION AGREEMENT

2 THIS AGREEMENT ("Agreement") is entered into this ____ day of
3 August, 2016, by and between the JOSHUA BASIN WATER DISTRICT, a public
4 agency of the State of California, (hereinafter, "JBWD") and JOSHUA TREE SOLAR
5 FARM, LLC, a limited liability company organized under the laws of the State of
6 Delaware ("JT Solar"). JBWD and JT Solar are referred to in this Agreement
7 collectively as the "Parties" and individually as a "Party."

8 WITNESSETH:

9
10 WHEREAS, JT Solar proposes to construct a twenty (20) megawatt
11 photovoltaic solar energy generating facility on approximately one hundred fifteen
12 (115) acres at the former Hi Desert (Roy Williams) Airport in the community of Joshua
13 Tree, San Bernardino County, California ("Project"); and

14 WHEREAS, JT Solar (or affiliate thereof) applied to the County of San
15 Bernardino ("County") for a Conditional Use Permit ("CUP") to design, install and
16 construct the Project; and

17 WHEREAS, on or about April 21, 2016, the County Planning
18 Commission approved (1) the Project, (2) the CUP, (3) the conditions of approval for
19 the Project, (4) the initial Study/Mitigated Negative Declaration and (5) all other related
20 Project approvals (collectively, "County Approvals"); and

21 WHEREAS, JT Solar applied to JBWD for water service for the Project;
22 and

23 WHEREAS, the Board of Directors of JBWD ("Board") shall consider the
24 issuance of a will serve letter ("Will Serve Letter") and the execution of a water supply
25 agreement ("WSA") on such terms and conditions as shall be acceptable to the Board;
26 and

1 WHEREAS, litigation challenging the granting or issuance of land use
2 approvals by governmental bodies is proliferating, and such litigation exposes JBWD
3 to potential liability for damages, costs, and attorney's fees; and

4 WHEREAS, in such litigation, the person or entity receiving land use
5 approvals is designated as a real party in interest and is the party that primarily and
6 directly benefits from the granting or issuance of the land use approvals; and

7 WHEREAS, JBWD could incur great expense in the active defense of
8 such litigation and, if unsuccessful, may also be required to pay certain fees and costs
9 including, the prevailing party's attorney's fees and costs; and

10 WHEREAS, JT Solar and JBWD mutually desire to enter into this
11 Agreement, by which JT Solar shall indemnify, (at JBWD's request) defend, save and
12 hold JBWD harmless, in order that JBWD shall bear no fiscal or financial burden
13 whatsoever resulting from any person or entity challenging the grant or issuance of
14 land use approvals to JT Solar (or an affiliate thereof) relating to or affecting the
15 Project or from such other matters described below.

16 1. HOLD HARMLESS.

17 JT Solar hereby agrees to save, indemnify, hold harmless and, at
18 JBWD's request, defend JBWD, its directors, officers, agents, representatives and
19 employees (collectively, "JBWD Indemnitees"), from and against all expenses,
20 demands, liabilities, claims, costs (including, but not limited to, court costs and
21 attorney's fees), suits, actions, causes of action, proceedings, obligations or damages
22 of any nature whatsoever (collectively "Costs") occurring or resulting to JBWD,
23 including, but not limited to, an award of attorney's fees and costs to the person,
24 organization or entity bringing an action against a JBWD Indemnitee arising out of,
25 resulting from, or in connection with (a) any JBWD action in granting, issuing or
26 approving the Will Serve Letter, or WSA for the Project, (b) failure by JBWD to prepare
27 or adequately prepare any document or instrument or to take or fail to take action or
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1 adequate action which may be required by the California Environmental Quality Act or
2 any other state or federal law related to the Will Serve Letter, WSA or the Project; (c)
3 any action challenging the approvals of the Project, including, without limitation, the
4 County Approvals, by any governmental body, including the County, (d) any action to
5 challenge, set aside, void or annul the Will Serve Letter, WSA, any approval of a
6 governmental agency, including the County Approvals, (e) any matter arising out of,
7 relating to or in connection with items (a) through (d) above, and (f) any enforcement
8 by JBWD of any provision of this Agreement.

9 When defending JBWD, JT Solar shall pay all attorneys' fees and costs
10 related to the defense in any action brought against JBWD, except for any fees and
11 costs incurred by JBWD in defense of any action, as provided in Section 3 of this
12 Agreement. JT Solar shall defend JBWD through counsel selected by JT Solar and
13 shall keep JBWD fully informed as to the progress of such defense. JBWD shall
14 reasonably cooperate with JT Solar in the defense of the claim. Notwithstanding the
15 foregoing, JBWD shall reasonably make all decisions with respect to strategy
16 (positions to assert, defense, etc.) in any legal proceeding concerning this Section. If
17 JT Solar fails to defend JBWD after notice to JT Solar as required by Section 2, JBWD
18 shall have the right, but not the obligation, to defend the same and charge all of the
19 direct or incidental Costs of such defense, including fees and costs, to JT Solar and to
20 recover the same from JT Solar. In connection therewith, JBWD shall have the right,
21 at JT Solar's expense, to appear in, or defend any action or proceeding arising out of
22 the indemnity.

23 2. NOTIFICATIONS AND COOPERATION BY JBWD.

24 JBWD shall notify JT Solar within a reasonable amount of time of its receipt of
25 any demand, claim, action, proceeding, or litigation in which JBWD is to be
26 indemnified and held harmless by JT Solar. If JBWD requests that JT Solar defend
27 JBWD, it shall notify JT Solar in writing within a reasonable amount of time of its
28

1 receipt of any such demand, claim, action, proceeding, or litigation. JBWD shall
2 reasonably cooperate in such defense.

3 3. JBWD PARTICIPATION IN DEFENSE.

4 Nothing contained herein shall prohibit JBWD, in its sole discretion, from
5 participating in the defense of any demand, claim, action, proceeding, or litigation over
6 and above representation by counsel paid for by JT Solar, or from participating in the
7 defense of any demand, claim, action, proceeding, or litigation. If JBWD elects to also
8 defend, it shall do so in good faith and JBWD shall bear its attorney's fees and costs.
9 Except as otherwise provided in this paragraph, in no event shall JBWD's participation
10 in the defense of any demand, claim, action, proceeding, or litigation affect the
11 obligations imposed upon JT Solar in Section 1 of this Agreement.

12 4. REIMBURSEMENT OF JBWD'S COSTS RE: ADMINISTRATIVE
13 RECORD.

14 If JBWD prepares the administrative record for any litigation challenging a land
15 use approval for the Project and/or in connection with the Will Serve Letter or WSA,
16 JBWD acknowledges that it will request, in writing, that such petitioner bringing such
17 action to pay the costs associated with preparation of an administrative record as
18 provided by law. JT Solar shall pay or reimburse JBWD for such efforts. However, if
19 the petitioner does not pay JBWD within ninety (90) days, JT Solar agrees to
20 reimburse JBWD for its actual costs incurred, including, but not limited to, JBWD staff
21 and attorney time expended, for certifying and/or preparing the administrative record in
22 connection with any litigation/proceedings related to the subject matter of this
23 Agreement. To the extent administrative record reimbursement and related costs are
24 recovered by the JBWD in any litigation, JT Solar shall be reimbursed to the extent of
25 any such recovery.

26 If the petitioner or plaintiff challenging the Will Serve Letter and/or WSA for the
27 Project is permitted by law to prepare the administrative record, and elects to do so,
28

1 and is later determined to be the prevailing party in litigation against JBWD, JT Solar
2 shall bear the petitioner's or plaintiff's costs of preparing the administrative record, as
3 determined by the court with jurisdiction over the litigation, in addition to any other
4 Costs pursuant to Section 1 of this Agreement.

5 5. COVENANT NOT TO SUE.

6 (a) JT Solar on behalf of itself, and its successors, and assigns,
7 hereby fully releases the JBWD Indemnitees, its successors, and all other persons and
8 associations, known or unknown, from all claims and causes of action, as a result of
9 the matters set forth subsections 1 (a) through (f) or any matters arising out of or in
10 connection therewith and covenants not to sue relating to such claims. JT Solar
11 acknowledges that it has been advised by legal counsel and is familiar with the
12 provisions of California Civil Code Section 1542. JT Solar expressly waives any right it
13 may have under Civil Code Section 1542, as well as under any other statute or
14 common law principle of similar effect.

15 (b) JT Solar acknowledges and agrees that this release applies to all
16 claims that JT Solar may have against JBWD arising out of or in connection with the
17 foregoing for injuries, damages, or losses to JT Solar's person and property, real or
18 personal, whether those injuries, damages, or losses are known or unknown, foreseen
19 or unforeseen, or patent or latent.

20 (c) JT Solar acknowledges and warrants that JT Solar's execution of
21 this release is free and voluntary.

22 (d) This release pertains to a disputed claim and does not constitute
23 an admission of liability by JBWD for the above-described matters.

24 (e) The provisions of paragraph 6 herein below, shall not apply to this
25 covenant not to sue.

26 6. SEVERABILITY.

1 If any provision of this Agreement is determined to be illegal, invalid, void, or
2 unenforceable in a final judgment by a court of competent jurisdiction, each and every
3 other provision hereof shall remain in full force and effect, unless this severability
4 provision would deny one or more of the Parties to the Agreement of the material
5 benefits of the Agreement, in which case the entire Agreement shall have no force and
6 effect.

7 7. APPLICABLE LAW.

8 This Agreement is made and entered into in the State of California and shall be
9 deemed to have been executed and delivered within the State of California, and the
10 rights and obligations of the Parties hereunder shall be governed by, and construed,
11 and enforced in accordance with the laws of the State of California.

12 8. CONSTRUCTION OF CONTRACT.

13 The Parties hereby acknowledge that they and their respective counsel have
14 cooperated in the drafting and preparation of this Agreement, for which reason this
15 Agreement shall not be construed against any Party as the drafter thereof.

16 9. REPRESENTATIONS AND WARRANTIES

17 JT Solar makes the following representations, warranties and covenants to
18 JBWD:

19 (a) JT Solar has the power and authority to enter into this Agreement
20 and to perform its obligations and all necessary approvals and authorizations have
21 been obtained that JT Solar must obtain to enter into this Agreement.

22 (b) This Agreement constitutes a legal, valid and binding obligation of
23 JT Solar and is enforceable against JT Solar in accordance with its terms.

24 10. GENERAL PROVISIONS

25 (a) This instrument and other writings referenced herein, contain the
26 entire agreement between the Parties relating to the subject matter hereof and
27 supersedes any and all prior agreements between the Parties, oral or written, and any

1 and all amendments thereto. Any oral representations or modifications concerning this
2 instrument shall be of no force and effect, excepting a subsequent modification in
3 writing, signed by the Parties to be charged.

4 (b) In the event of any litigation or other action between the Parties
5 arising out of or relating to this Agreement or the breach thereof, the prevailing Party
6 shall be entitled, in addition to such other relief as may be granted, to its reasonable
7 costs and attorneys' fees.

8 (c) Each Party hereto agrees to execute and deliver such other
9 documents and perform such other acts as may be necessary to effectuate the
10 purposes of this Agreement.

11 (d) No delay on the part of any Party hereto in exercising any right,
12 power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on
13 the part of any Party hereto of any right, power or privilege hereunder operate as a
14 waiver of any other right, power or privilege hereunder, nor shall any single or partial
15 exercise of any right, power or privilege hereunder, preclude any other or further
16 exercise of any other right, power or privilege hereunder.

17 (e) The Parties agree that any action or proceeding to enforce or
18 relating to this Agreement shall be brought exclusively in the State courts located in
19 San Bernardino County, California, or the Federal court located in Riverside County,
20 California and the Parties hereto consent to the exercise of personal jurisdiction over
21 them by any such courts for purposes of any such action or proceeding.

22 (f) This Agreement will not be construed to create any third party
23 beneficiaries. This Agreement is for the sole benefit of the Parties and their respective
24 successor, transferees and assignees and no other person or entity will be entitled to
25 rely on or receive any benefit from this Agreement or any of its terms.

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IN WITNESS WHEREOF, JT SOLAR and JBWD hereby execute this Agreement.

JT SOLAR:

JOSHUA BASIN WATER DISTRICT

Joshua Tree Solar Farm, LLC

By _____

By _____

Date: _____

Date: _____

APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

By _____
Attorney for JT Solar

By _____
Attorney for Joshua Basin Water
District