

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

832



FROM: Planning Department

SUBMITTAL DATE:
November 29, 2012

SUBJECT: Agreement between the County of Riverside and McCoy Solar, LLC regarding CEQA Streamlining of the McCoy Solar Energy Project under the Jobs and Economic Improvement through Environmental Leadership Act of 2011

RECOMMENDED MOTION: That the Board of Supervisors approve the attached agreement between McCoy Solar, LLC and the County of Riverside regarding California Environmental Quality Act streamlining of the McCoy Solar Energy Project Under the Jobs and Economic Improvement through Environmental Leadership Act of 2011 (the "Act") and authorize the Chairman of the Board to execute the agreement on behalf of the County.

Carolyn Syms Luna

Carolyn Syms Luna, Planning Director

(continued on the attached page)

| | | | | |
|-----------------------|-------------------------------|-----|-------------------------|-----|
| FINANCIAL DATA | Current F.Y. Total Cost: | \$0 | In Current Year Budget: | N/A |
| | Current F.Y. Net County Cost: | \$0 | Budget Adjustment: | N/A |
| | Annual Net County Cost: | \$0 | For Fiscal Year: | N/A |

| | | |
|-------------------------|----------------------------------|--------------------------|
| SOURCE OF FUNDS: | Positions To Be Deleted Per A-30 | <input type="checkbox"/> |
| | Requires 4/5 Vote | <input type="checkbox"/> |

C.E.O. RECOMMENDATION:

APPROVE
BY: *Denise C. Harden*

Denise C. Harden

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: *Tiffanyn North*
DATE: 11/29/12
TIFFANYN NORTH

Departmental Concurrence

Policy
 Policy

Consent
 Consent

Dept't Recomm.:
 Per Exec. Ofc.:

Prev. Agn. Ref.

District: 4th/4th

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.22

The Honorable Board of Supervisors

RE: Agreement between the County of Riverside and McCoy Solar, LLC regarding CEQA Streamlining of the McCoy Solar Energy Project under the Jobs and Economic Improvement through Environmental Leadership Act of 2011

Page 2 of 2

BACKGROUND:

Assembly Bill 900, the Jobs and Economic Improvement through Environmental Leadership Act of 2011 (Public Resources Code section 21178 et seq), effective January 1, 2012, sets up a California Environmental Quality Act ("CEQA") streamlining/expedited procedure for judicial challenges under CEQA to "environmental leadership development projects."

In order to qualify for the litigation streamlining provisions of the Act, a project must be designated as an "environmental leadership development project" by the Governor. One of the potential categories for such a leadership project designation is a solar photovoltaic project. McCoy Solar, LLC ("McCoy") has filed an application for a conditional use permit (CUP03682), an application for a public use permit (PUP00911), a development agreement and proposes to construct the McCoy Solar Energy Project, an up-to 750 megawatt solar photovoltaic project (the "Project"), in an unincorporated portion of the County.

AB 900 requires that the applicant notify a lead agency prior to the release of the Draft Environmental Impact Report that the applicant is electing to proceed under the Act. McCoy has given such notice. Further, the applicant must apply to the Governor to be deemed a leadership project. McCoy applied to the Governor on January 12, 2012.

Among other things, under the Act, the Governor may certify a leadership project for CEQA streamlining if:

- The project applicant has entered into a binding and enforceable agreement that all mitigation measures required pursuant to the Act to certify the project shall be conditions of approval of the project, and those conditions will be fully enforceable by the lead agency or another agency designated by the lead agency.
- The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court.
- The project applicant agrees to pay the costs of preparing the administrative record for the project concurrent with review and consideration of the project pursuant to the Act, in a form and manner specified by the lead agency for the project.

The attached agreement addresses the above bullet points.

There is no cost to the County under the agreement. McCoy will be responsible for payment of all costs associated with the Act.

BINDING AND ENFORCEABLE AGREEMENT BETWEEN THE COUNTY OF RIVERSIDE AND MCCOY SOLAR, LLC, REGARDING CEQA STREAMLINING OF THE MCCOY SOLAR ENERGY PROJECT UNDER THE JOBS AND ECONOMIC IMPROVEMENT THROUGH ENVIRONMENTAL LEADERSHIP ACT OF 2011

This **Binding and Enforceable Agreement** (this "Agreement") is entered into this ___ day of _____, 2012 by and between **McCoy Solar, LLC**, a Delaware limited liability company ("McCoy") and the **County of Riverside** ("County") in accordance with Public Resources Code, section 21183. Together McCoy and the County are herein referred to as "Parties"; individually they are referred to as a "Party".

RECITALS

This Agreement is made with respect to the following facts:

WHEREAS, the Jobs and Economic Improvement through Environmental Leadership Act of 2011 (the "Act") became effective on January 1, 2012; and

WHEREAS, the stated purpose of the Act is to provide unique and unprecedented streamlining benefits under the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.: "CEQA") for projects that provide the benefits described in the Act for a limited period of time in order to put people to work as soon as possible; and

WHEREAS, McCoy has filed an application for a conditional use permit (CUP03682) and an application for a public use permit (PUP00911), has requested a development agreement and proposes to construct the McCoy Solar Energy Project, an up-to 750 megawatt net alternating current solar generating installation utilizing photovoltaic technology (the "Project"), in an unincorporated portion of the County of Riverside; and

WHEREAS, in accordance with Public Resources Code, section 21165 and Title 14, California Code of Regulations, section 15367, the County is the lead agency for purposes of the Project; and

WHEREAS, McCoy has applied to the Governor's Office of Planning and Research ("Governor") for certification of the Project as a leadership project pursuant to Public Resources Code, section 21178 et seq. ("Certification"); and

WHEREAS, Public Resources Code, section 21183 states that the Governor may certify a leadership project for streamlining pursuant to the Act if all six prerequisites outlined in the statute are satisfied; and

WHEREAS, Public Resources Code, section 21183, subdivision (d), requires that a project applicant enter into a binding and enforceable agreement that requires all mitigation measures that are necessary to certify the Project under the Act be imposed as conditions of approval on the project and that those conditions will be fully enforceable by the lead agency; and

WHEREAS, Public Resources Code, section 21183, subdivision (e) requires that a project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council; and

WHEREAS, Public Resources Code, section 21183, subdivision (f) requires that a project applicant agrees to pay the costs of preparing the administrative record for the project concurrent with review and consideration of the project pursuant to CEQA and the Act, in a form and manner specified by the lead agency for the project; and

WHEREAS, the Parties desire to enter into this Agreement in satisfaction of Public Resource Code, section 21183.

AGREEMENT

NOW, THEREFORE, in consideration of the following mutual promises and agreements, McCoy and the County agree as follows:

1. Recitals. The Parties agree that the Recitals constitute the factual basis upon which McCoy and the County have entered into this Agreement. McCoy and the County each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length herein.

2. Conditions of Approval. All mitigation measures required pursuant to Division 13 of the Public Resources Code to certify the Project under Chapter 6.5 of Division 13 of the Public Resources Code shall be conditions of approval of the Project. Additionally, McCoy agrees that it, and any of its successors and assigns, will be responsible for all costs incurred to comply with the Act.

3. Enforceability. The conditions of approval of the Project shall be fully enforceable by the County or another agency designated by the County.

4. Mitigation Monitoring. In the case of environmental mitigation measures, McCoy agrees, as an ongoing obligation, that the mitigation measures required pursuant to Division 13 of the Public Resources Code will be monitored and enforced by the County for the life of the obligation. Additionally, McCoy agrees that it, and any of its successors and assigns, will be responsible for all costs incurred by the County to monitor and enforce such mitigation measures for the life of the obligation. McCoy further agrees that any Project approval may include a condition of approval requiring a cash deposit or other form of security acceptable to the County to secure the County's ability to monitor and enforce the mitigation measures for the of the obligation at no cost to the County.

5. Resolution of Discretion. The Parties understand and acknowledge that, in the context of processing the applications for the Project, the County cannot guarantee the ultimate outcome of any public hearings before the County Planning Commission or the County Board of Supervisors or other public bodies of the County, nor prevent any opposition thereto by members of the public or other agencies affected by or interested in the Project. By entering into this

Agreement, the County does not pre-commit or imply that the applications for the Project to be considered for approval will be approved. The County retains the discretion to approve, conditionally approve, or disapprove the Project.

6. Appeal Costs. As required by Public Resources Code section 21183, subdivision (e), McCoy agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council pursuant to the Act.

7. Administrative Record Costs. As required by Public Resources Code section 21183, subdivision (f), McCoy agrees to pay the costs of preparing the administrative record for the Project, in a form and manner specified by the County, concurrent with review and consideration of the Project pursuant to CEQA and the Act. In the event of a dispute between the County and McCoy with regard to the form and manner of preparing the administrative record, the County's decision shall control.

8. Indemnification. McCoy shall defend, indemnify, and hold harmless the County, its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees in connection with this Agreement. The County shall notify McCoy of any such claim, action, or proceeding and the County shall reasonably cooperate in the defense. The legal counsel selected by McCoy shall be acceptable to the County. McCoy shall pay all legal services expenses the County incurs in connection with any such claim, action or proceeding, whether it incurs such expenses directly, whether it is ordered by a court to pay such expenses, or whether it incurs such expenses by providing legal services through its Office of County Counsel or through other outside counsel.

9. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

10. Governing Law. The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in Riverside County, California.

11. Authority to Execute. The persons executing this Agreement warrant and represent that they have the authority to execute this Agreement on behalf of the Party for which they are executing this Agreement. They further warrant and represent that they have the authority to bind their respective Party to the performance of its obligations under this Agreement.

[Signatures on Next Page]

SIGNATURE PAGE TO THE BINDING AND ENFORCEABLE AGREEMENT BETWEEN
MCCOY SOLAR, LLC AND THE COUNTY OF RIVERSIDE:

McCOY SOLAR, LLC, a Delaware limited liability company

By: _____
Matthew S. Handel
Vice President

Date: _____

ATTESTED TO:

By: _____

APPROVED AS TO FORM:

By: _____

COUNTY OF RIVERSIDE

By: _____

Date: _____

APPROVED AS TO FORM:

By:  _____
Tiffany North