

## Hingtgen, Robert J

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**From:** Fitzpatrick, Lisa  
**Sent:** Tuesday, January 13, 2015 9:56 AM  
**To:** Donna Tisdale  
**Cc:** Gungle, Ashley; Hingtgen, Robert J  
**Subject:** RE: Soitec FEIR -- MESF quid pro quo not allowed

Hello Mrs. Tisdale:

On behalf of the San Diego County, Planning Commission, I would like to thank you for your correspondence. Your correspondence will be distributed for review by our Planning Commissioners.

Thank you,

*Lisa M. Fitzpatrick*

Lisa M. Fitzpatrick  
Commission Secretary  
Planning and Development Services  
5510 Overland Drive, MS: O-650  
San Diego, CA 92123  
(858) 694-3816  
(858) 694-3373 (Fax)

**From:** Donna Tisdale [<mailto:tisdale.donna@gmail.com>]  
**Sent:** Tuesday, January 13, 2015 9:31 AM  
**To:** Gungle, Ashley; Fogg, Mindy; Hingtgen, Robert J; Gretler, Darren M; Fitzpatrick, Lisa  
**Cc:** Jacob, Dianne; Wilson, Adam; [Kathy.Granger@meusd.k12.ca.gov](mailto:Kathy.Granger@meusd.k12.ca.gov)  
**Subject:** Soitec FEIR -- MESF quid pro quo not allowed

Hello Ashley,

For the Soitec FEIR record, please take note of the attached Community Benefit Agreement contract between Soitec and the newly formed Mountain Empire School Foundation (MESF) , dated January 7th , 2015.

In particular, please see page 2 of the contract, section **III Actions by Mountain Empire Schools Foundation**, that includes the following quid pro quo actions which are not allowed for Community Benefit Agreements:

**Mountain Empire Schools Foundation on its own behalf and/or through its officers, representatives, business managers, agents, and/or attorneys will support the approval of the Projects by the County, and will not challenge, oppose, contest, take adverse actions or bring suit, administratively or judicially regarding the Projects or their Approvals.**

We went through this same controversy with the Tule Wind Donation Agreement between Mountain Empire School District, when Steve VanZant was the Superintendent. At that time, staff and County Counsel agreed with the Boulevard Planning Group that the quid pro quo, requiring support for the project in exchange for cash,

was unlawful. As a result, Superintendent Van Zant had to negotiate a change to eliminate the unlawful project support requirement.

**The same change is now required to eliminate the quid pro quo requirement in Soitec's contract with MESF and any other so-called Community Benefit Agreements that Soitec may have negotiated.**

Soitec's consultant, James Whalen, also consultants for Tule Wind. Mr. Whalen was involved during the previous controversy and should have informed Soitec and MESF in order to avoid a repeated controversy. Mr. Whalen is also well aware of the strong community and Boulevard Planning Group opposition to Soitec's controversial industrial scale electrical projects proposed for fire-prone Boulevard neighborhoods and sensitive lands.

The Planning Group has previously gone on record that any Community Benefit Agreement with Mountain Empire School District or related entity should focus those benefits on the most project impacted and low income community schools in Boulevard and Jacumba-- Pine Valley.

Regards,

Donna Tisdale, Chair  
Boulevard Planning Group  
619-766-4170



Soitec Solar, Inc.  
16550 Via Esprillo  
San Diego, CA 92127 (USA)  
T. + 1(0)619-733-2649  
[Patrick.Brown@Soitec.com](mailto:Patrick.Brown@Soitec.com)  
[www.soitec.com](http://www.soitec.com)

January 7, 2015

**VIA ELECTRONIC MAIL AND U.S. MAIL**

[Kathy.Granger@meusd.k12.ca.us](mailto:Kathy.Granger@meusd.k12.ca.us)

Ms. Kathy Granger, Ed.D.  
Superintendent  
Mountain Empire Unified School District  
3305 Buckman Springs Road  
Pine Valley, CA 91962

**Execute and Return Agreement For Community Benefit Agreement for Mountain Empire Schools Foundation**

Dear Ms. Granger:

Please find the attached Public Benefits Agreement Award and Acceptance Letter Agreement. As we discussed, your Board will need to confirm your consent to the terms of this Agreement before they can be official. Please sign the attached agreement and return one of the wet signature pages back to my office at the above address. Time is of the essence because of the upcoming Planning Commission January 16<sup>th</sup>, 2015, so I request that you return by at least Wednesday January 14<sup>th</sup>. If you have any questions, please feel free to contact me at 619-733-2649 or by email at [Patrick.Brown@Soitec.Com](mailto:Patrick.Brown@Soitec.Com).

Respectfully,

A handwritten signature in blue ink that reads 'Patrick P. Brown'.

Patrick Brown  
Project Manager, Soitec Solar Inc.

Attachments: Public Benefits Agreement Award and Acceptance Letter Agreement

cc: Karen Hutchens, Hutchens PR.  
James Whalen, JWA and Associates



Soitec Solar Development LLC  
16550 Via Esprillo  
San Diego, CA 92127 (USA)  
T. + 1(0)858-746-9000  
[Clark.crawford@Soitec.com](mailto:Clark.crawford@Soitec.com)  
[www.soitec.com](http://www.soitec.com)

January 7, 2015

**VIA ELECTRONIC MAIL AND U.S. MAIL**

[Kathy.Granger@meusd.k12.ca.us](mailto:Kathy.Granger@meusd.k12.ca.us)

Ms. Kathy Granger, Ed.D.  
Superintendent  
Mountain Empire Unified School District  
3305 Buckman Springs Road  
Pine Valley, CA 91962

**Re: Community Benefit Agreement for Mountain Empire Schools Foundation**

Dear Ms. Granger:

Rugged Solar LLC ("Rugged Solar") and Tierra del Sol Solar Farm LLC ("Tierra del Sol Solar") (jointly, the "Companies") are developing Rugged Solar and Tierra del Sol Solar, respectively (jointly, the "Projects"). The Projects have applied for Major Use Permits from the County of San Diego ("County") and the County is preparing a Program Environmental Impact Report to analyze the Projects' potential environmental impacts (jointly, the "Approvals").

If approved by the County, the Projects would generate up to 140 megawatts (MW) of renewable solar energy through the installation of concentrator photovoltaic (CPV) trackers located on sites in the Boulevard and Tierra del Sol communities. The Projects have been certified by the Governor and Legislature as an "Environmental Leadership" project under the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, Public Resources Code Sections 21178 *et seq.* Together they would contribute over \$100 million to the local economy, and would offset all of their greenhouse gas (GHG) emissions for the lives of the Projects.

The Companies are committed to supporting the local community that their Projects will join. Accordingly, the Companies desire to support Mountain Empire Schools Foundation's mission as part of their commitment to the local community.

Mountain Empire Schools Foundation supports the Projects and the benefits that they will bring to the local community, the County of San Diego, and the State of California.

In consideration of the mutual terms, covenants, conditions and promises contained herein, the Companies and Mountain Empire Schools Foundation (jointly, the "Parties") enter into this Community Benefit Agreement ("Agreement"), the terms of which are set forth below.

**TERMS**

**I. CONDITION PRECEDENT**

This Agreement is conditioned upon the following condition precedent:

- Execution of one or several power purchase agreements between the Companies and a public utility company, for a duration of at least 15 years;
- The Companies have obtained the financing for the Projects;
- Notice to proceed to build the Projects has been issued.

If the Major Use Permit for the Project expires or is terminated by the County for cause, then the Agreement will terminate automatically without further action from the Parties, unless there is an approved time extension or reissuance of the permit for a Photovoltaic Use.

**II. ACTIONS BY THE COMPANIES**

The Rugged Solar project will make an annual donation to Mountain Empire Schools Foundation, in the amount of \$60,000 for a total expected contribution of approximately \$1.8 Million based on an estimated 30-year life span of the Project.

The Tierra Del Sol project will make an annual donation to Mountain Empire Schools Foundation, in the amount of \$40,000 for a total expected contribution of approximately \$1.2 Million based on an estimated 30-year life span of the Project.

These contributions are contingent upon the Projects receiving a 30% Federal Business Energy Investment Tax Credit (ITC), and based upon 140 MW of installed Alternating Current (AC); 80 MW at the Rugged Project and 60 MW at Tierra del Sol.

Each of the project's contributions will be reduced proportionally if either the ITC is reduced, or if the Project's permitted capacity is reduced.

**III. ACTIONS BY MOUNTAIN EMPIRE SCHOOLS FOUNDATION**

This contribution will be used to provide additional funding for education-related services and activities for Mountain Empire Unified School District students of the Mountain Empire, specifically the communities of Boulevard, Pine Valley, and Jacumba.

Mountain Empire Schools Foundation on its own behalf and/or through its officers, representatives, business managers, agents, and/or attorneys will support the approval of the Projects by the County, and will not challenge, oppose, contest, take adverse actions or bring suit, administratively or judicially regarding the Projects or their Approvals.

**IV. ASSIGNMENT; BINDING ON SUCCESSORS**

The Companies may assign or transfer its interest in this Agreement with prior written notice to Mountain Empire Schools Foundation.

The Companies shall ensure that this Agreement shall inure to the benefit of and be binding upon the Companies and any person or entity that acquires over fifty (50%) percent of the Companies' rights, title or interest in the Projects whether by sale, lease, merger, or other transfer, as though they were Parties thereto, wherever located.

This Agreement and its terms shall, and Mountain Empire Schools Foundation shall cause it to, inure to the benefit of and be binding upon Mountain Empire Schools Foundation and each and all of its respective successors, assignees, buyers, grantees, vendees, or transferees, and their past, present or future, direct or indirect, affiliates, partners, joint venturers, subsidiaries, parents, receivers, trustees, officers, directors, employees, agents, and shareholders of each of them.

**V. UNDERSTANDING OF TERMS**

The Parties hereto each hereby affirm and acknowledge that they have read this Agreement, that they know and understand its terms, and have signed it voluntarily and on the advice of counsel. The Parties have had a full and unhindered opportunity to consult with their attorneys, accountants, financial advisors and such other consultants as they may have desired prior to executing this Agreement.

**VI. ENFORCEMENT**

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by JAMS in accordance with JAMS's Streamlined Rules and, with regard to discovery, in compliance with the Expedited Procedures set forth in Rules 16.1 and 16.2 of the Comprehensive Arbitration Rules and resolve the dispute in accordance with California substantive law and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Claims shall be heard by a single arbitrator selected by agreement between one arbitrator selected by the Companies and another arbitrator selected by Mountain Empire Schools Foundation. The place of arbitration shall be San Diego, California. Time is of the essence for any arbitration under this agreement and arbitration hearings shall take place within 90 days of filing and awards rendered within 120 days. The arbitrator shall agree to these limits prior to accepting appointment. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of their costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. The decision and award by the arbitrator shall be in writing and shall be binding upon the Parties, final and nonappealable. Except as may be required by law, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties.

The Parties agree that failure or refusal of a Party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that Party to present evidence or cross-examine witness. In such event, the other Party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver shall not allow for a default judgment against the non-paying Party in the absence of evidence presented as provided for above. The successful Party may cause the decision to be entered as and become a judgment or enforceable equitable remedy against the other Party or Parties by applying and submitting the written resolution to a court of competent jurisdiction in San Diego, California (the Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4th 362 (1994) and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California law).

**VII. AUTHORITY TO EXECUTE AGREEMENT**

Each person signing this Agreement warrants that he or she has authority to execute this Agreement and to thereby bind the Party on whose behalf he or she is signing to the terms of this Agreement.

**VIII. MATERIALITY OF BREACH**

Any breach of this Agreement, at the option of any Party, shall be treated as material and a complete failure of consideration.

**IX. WAIVER**

The waiver of any provision or term of this Agreement shall not be deemed as a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed as a waiver of any provision or term of this Agreement.

**X. AMENDMENTS**

No provision of this Agreement may be modified, unless in writing and signed by the Party against whom the enforcement of such modification is sought.

**XI. PARAGRAPH HEADINGS**

Paragraph headings are provided herein for convenience only and shall not serve as a basis for interpretation or construction of this Agreement, nor as evidence of the intention of the Parties.

**XII. SEVERABILITY**

If any portion of this Agreement as applied to any Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other

provision of this Agreement, the application of any such provision in another circumstance, or the validity or enforceability of this Agreement as a whole.

**XIII. TIME OF THE ESSENCE**

Time is of the essence in this Agreement.

**XIV. COUNTERPARTS**

This Agreement may be signed by the Parties in different counterparts and the signature pages combined to create a document binding on the Parties.

**XV. TERM**

The term of this Agreement shall commence on the date it is executed by the last party to execute the agreement, and shall terminate on the earlier of the Projects ceasing operations, or completely satisfying the terms set forth in Sections II and III, above.

**XVI. CALIFORNIA LAW**

The terms of this Agreement shall be construed pursuant to the laws of the State of California. Venue for any litigation relative to the formation, interpretation, and performance of this Agreement shall be in San Diego County, California.

**XVII. NOTICE**

All letters, statements, or notices required pursuant to this Agreement shall be sent to the following addressees. Any letter, statement or notice sent shall be deemed served at the time of delivery when personally served, transmitted by facsimile machine or electronic mail, or by overnight parcel service. Any letter, statement, or notice sent by registered or certified mail shall be deemed served on the business day following deposit thereof in the U.S. Mail.

To: Mountain Empire Schools Foundation Ms. Kathy Granger, Ed.D.  
Superintendent  
Mountain Empire Unified School District  
3305 Buckman Springs Road  
Pine Valley, CA 91962  
Telephone: 619-473-9022  
Facsimile : 619-473-9728  
[Kathy.Granger@meusd.k12.ca.us](mailto:Kathy.Granger@meusd.k12.ca.us)

To: Rugged Solar LLC  
Rugged Solar LLC  
Attn: General Counsel  
16550 Via Esprillo  
San Diego, CA 92127

**Mountain Empire Schools Foundation Contract  
1/7/15**

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Telephone: 858-746-9000

With a copy to:

Ryan Waterman  
Stoel Rives LLP  
12255 El Camino Real, Ste. 100  
San Diego, CA 92130  
Telephone: (858) 794-4100  
Facsimile: (858) 794-1401  
[rrwaterman@stoel.com](mailto:rrwaterman@stoel.com)

To: Tierra del Sol Solar Farm LLC

Tierra del Sol Solar Farm LLC  
Attn: General Counsel  
16550 Via Esprillo  
San Diego, CA 92127  
Telephone: 858-746-9000

With a copy to:

Ryan Waterman  
Stoel Rives LLP  
12255 El Camino Real, Ste. 100  
San Diego, CA 92130  
Telephone: (858) 794-4100  
Facsimile: (858) 794-1401  
[rrwaterman@stoel.com](mailto:rrwaterman@stoel.com)

To confirm your consent to the terms of this Agreement, please sign this letter as indicated below and return to my office at the above address.

Very truly yours,

Clark Crawford

Cc: Lionel Bochorberg, Soitec  
Patrick Brown, Soitec  
Ryan Waterman, Stoel Rives LLP

Rugged Solar LLC agrees to the terms of this Community Benefit Agreement, as set forth above.

RUGGED SOLAR LLC

By: Clark Crawford  
Clark Crawford, Attorney-in-fact

Dated: Jan 7, 2015

Tierra del Sol Solar Farm LLC agrees to the terms of this Community Benefit Agreement, as set forth above.

TIERRA DEL SOL SOLAR FARM LLC

By: Clark Crawford  
Clark Crawford, Attorney-in-fact

Dated: Jan 7, 2015

Mountain Empire Schools Foundation agrees to the terms of this Community Benefit Agreement, as set forth above.

Mountain Empire Schools Foundation

By: \_\_\_\_\_  
Kathy Granger, Ed.D., Superintendent

Dated: \_\_\_\_\_, 2015