

**AGREEMENT AMONG  
THE DEPARTMENT OF DEFENSE,  
THE DEPARTMENT OF THE ARMY,  
AND  
BABACOMARI SOLAR NORTH LLC  
ADDRESSING THE BABACOMARI SOLAR PROJECT NEAR FORT HUACHUCA –  
WHETSTONE, ARIZONA**

This is an agreement among the Department of Defense (DoD), acting through the Military Aviation and Installation Assurance Siting Clearinghouse, the Department of the Army (MILDEP), acting through Deputy Assistant Secretary of the Army (Energy and Sustainability) (collectively the “DoD parties”), and Babacomari Solar North LLC (Project Owner). Together, these three entities are referred to as “parties” and individually as a “party.” Any reference to “DoD parties” means both and does not indicate that one party acts for or on behalf of the other. In this agreement, DoD does not include the United States Army Corps of Engineers when engaged in its civil works program, including any permitting actions.

This agreement is entered into pursuant to section 183a of title 10, United States Code (U.S.C.), and part 211 of title 32, Code of Federal Regulations (CFR).

Attachments A, *Federal Aviation Administration Filings*, and B, *Project Area*, are attached to this agreement and made a part hereof.

For good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

**SECTION 1. PURPOSE.**

**A. Objective.** The objective of this agreement is to mitigate any potential adverse impact and to minimize risks to national security posed by foreign-sourced green energy infrastructure components that may allow foreign adversaries to monitor sensitive operations near Fort Huachuca, while allowing the Babacomari Solar Project (Project) to proceed with development. The parties agree that the terms below will allow the mutual goals of the parties to be met.

**B. De-confliction. [RESERVED]**

**SECTION 2. DEFINITIONS.**

**A. Access.** “Access” means the opportunity for or actual physical or logistical access to devices, data, or components, or to enter a physical space, or to allow remote- read, copy, edit, diversion, release, alteration of the state of, disclosure, or otherwise affect information technology systems (e.g., network, data, security, software, hardware) within premises, or a cloud environment.

**B. Actual Curtailment Hours. [RESERVED]**

**C. ASN.** Federal Aviation Administration Aeronautical Study Number.

**D. Banked Hours. [RESERVED]**

**E. CFIUS.** Committee on Foreign Investment in the United States.

**F. CFR.** Code of Federal Regulations.

**G. Curtailment. [RESERVED]**

**H. Day.** A calendar day unless indicated otherwise.

**I. DoD.** Department of Defense, an executive department of the United States.

**J. FAA.** Federal Aviation Administration, an agency of the United States Department of Transportation.

**K. Fiscal Year. [RESERVED]**

**L. Hour. [RESERVED]**

**M. Information and Communications Technology and Services (ICTS).** The term ICTS, per Executive Order 13873, *Executive Order on Securing the Information and Communications Technology and Services Supply Chain*, means “any hardware, software, or other product or service primarily intended to fulfill or enable the function of information or data processing, storage, retrieval, or communication by electronic means, including transmission, storage, and display”.

**N. Intelligent Component.** The term intelligent component as used in this Agreement means (a) any hardware processor; (b) the microprocessor itself; (c) any semiconductor device that has processing ability; (d) any device that has internal memory; and (e) any component or device that performs a communication function. For example, a low-cost ARM processor in a printer or an Ethernet controller is an intelligent component.

**O. MILDEP.** Department of the Army, a military department of the United States.

**P. National Security or Defense Purpose.** An emergency circumstance where the President of the United States, the Secretary of Defense, or a combatant commander under 10 U.S.C. section 164 directs a change to the mission of the Installation in support of emergency circumstances. An emergency circumstance does not include routine changes to the mission of the Installation.

**Q. Project.** The Babacomari Solar Project, which will consist of the approximately 400,000 proposed photovoltaic panels (PV panels, and individually, a PV panel) located within the

specific geographic coordinates listed on Attachment A by ASN or by substitute ASNs submitted in accordance with section 3.E.(1)(2) or 10.A of this agreement.

**R. Project Owner.** Babacomari Solar North LLC.

**S. Radar Adverse-impact Management (RAM).** [RESERVED]

**T. Siting Clearinghouse.** The Military Aviation and Installation Assurance Siting Clearinghouse established pursuant to 10 U.S.C. section 183a.

**U. U.S.C.** United States Code.

### **SECTION 3. MITIGATION.**

**A. In General.** This agreement is structured to ensure Project Owner may construct and operate the Project without adversely impacting DoD military operations and readiness at Fort Huachuca. Project Owner agrees to restrict the construction of the Project to the specific geographic coordinates listed in Attachment A and Project Area, as shown in Attachment B.

**B. Impact Analysis during Test Energy Phase.** [RESERVED]

**C. Voluntary Contribution.** [RESERVED]

**D. Amendment of Applications.** [RESERVED]

**E. Withdrawal of Objections.**

1. Within 10 calendar days of the execution of this agreement, the DoD parties shall deliver to the FAA "No Objections with Provisions" for the ASNs corresponding to the PV panel locations listed on Attachment A. The "Provisions" will incorporate by reference this agreement, referring to it by its title, the date executed, and its signatories.

2. If a Project Owner submits any substitute ASNs to FAA within 12 months of the execution of this agreement, the DoD parties agree to deliver to the FAA "No Objections with Provisions" provided that the substitute ASNs are located within the siting parameters of the Project area specified in Attachment B of this agreement or any amendments to this agreement and that a statement is incorporated into FAA's OE/AAA system referencing this agreement, referring to it by its title, the date executed and its signatories.

3. All parties agree that, if a Project Owner requests to extend the effective period of FAA's Determination of No Hazard to Air Navigation in accordance with 14 CFR section 77.35, then the DoD Parties agree to deliver to the FAA "No Objections with Provisions" provided that the affected ASNs are listed on Attachment A (as amended, if applicable, in accordance with section 10.A below) or are substitute ASNs filed within 12 months of the execution of this agreement, are located within the siting parameters of the Project area

specified in Attachment B of this agreement or any amendments to this agreement, and that a statement is incorporated into FAA's OE/AAA system referencing this agreement, referring to it by its title, the date executed and its signatories.

4. The DoD parties agree not to object to the construction and operation of the Project before any federal, state, or local regulatory entity with jurisdiction over the Project (except if it relates to the CFIUS review process in section 10.H of this agreement), provided also that the Project Owner is in material compliance with the terms of this agreement and that the Project Owner has disclosed to the DoD parties in writing all material facts necessary to fully assess potential adverse impacts and all material facts relevant to other federal, state, or local regulatory entity jurisdictional matters.

**F. Other Regulatory Actions.** This agreement shall not prevent or limit the DoD parties from communicating in any form with any regulatory body or agency with jurisdiction or possible jurisdiction over matters affecting the Installation which do not relate to the Project.

#### **SECTION 4. CURTAILMENT. [RESERVED]**

#### **SECTION 5. REVIEW OF BUSINESS ENTITIES.**

**A. Protection of Defense Capabilities.** It is a priority for the MILDEP to protect national defense capabilities and military operations, including military installations, research, development, test and evaluation activities, and military readiness activities from compromise and exploitation that may occur due to actions or activities under foreign control that may compromise security or operations in the vicinity of those national defense capabilities and military operations. MILDEP at the installation level will meet annually with Project Owner to ensure protection of defense capabilities now and into the future.

#### **B. Advance Notice.**

1. Project Owner has provided, and will continue to provide, advance written notice to the MILDEP of the following:

a. The names of entities and persons having a direct ownership interest in the Project.

b. The names of the material vendors, entities and persons with which Project Owner will potentially execute contracts to perform construction, supply PV panels, ICTS to include operational technology (including embedded sub-components) or conduct or support operations activities of the Project. The information to be provided for each ICTS system shall include the following:

i. Name of system

- ii. Purpose of system
  - iii. System manufacturer and location of manufacture
  - iv. Hardware bill of materials to include subcomponents and software versions
- c. The names of any foreign entities and persons being allowed to access the PV panels and ICTS at the location of the Project, and associated data systems, independent of physical location.

2. For those entities and persons identified under paragraph 5.B.1.a and 5.B.1.b, the MILDEP agrees to identify to Project Owner, no later than 10 business days after notification is provided, any entity and person posing a security concern. For those entities and persons identified under paragraph 5.B.1.c, the MILDEP agrees to identify to Project Owner, no later than 10 business days after the receipt of the name of any foreign entity and person being allowed to access the PV panels, ICTS, and associated data systems, any entity and person posing a security concern. Project Owner agrees to enter into negotiations with the DoD parties in order to mitigate any such concern. Any such security concern must be resolved prior to allowing access to the site by such persons or representatives of such entities or the use of PV panels, ICTS, remote monitoring, control systems, design data, operational data, other permanent on-site equipment, or temporary maintenance, test, or calibration equipment manufactured by or used by such entity.

3. Project Owner agrees to provide advance written notice to the MILDEP of Project Owners' use of any material vendor not previously screened pursuant to this section. The term "material" used in this subsection means "significant, influential, or relevant." Project Owner shall allow the MILDEP 10 business days following such a notice to conduct a security review and assess any security concern. Project Owner will provide advance written notice of a potential new material vendor but need not wait 10 business days if an unexpected situation arises for which employing services or vendors immediately is necessary for the continuity of operation of the Project. If the MILDEP has security concerns with emergency vendor changes, Project Owner agrees to negotiate mitigations to resolve those concerns.

## SECTION 6. ASSIGNMENT.

**A. Right to Assign.** This agreement shall be binding upon the Project Owner and their successors and assigns. If Project Owner and their successors or assigns (assignors) elect to sell, convey, mortgage, assign, or otherwise transfer all or any part of its interests and obligations in the assets comprising the Project (assignment) to any third party (assignee), assignor shall cause such assignee to expressly acknowledge the existence of this agreement. The assignor shall provide a copy of this agreement to the assignee. The assignee shall provide new point of contact information (as in Section 8) to the DoD parties.

**B. Notice of Assignment to CFIUS.** If the prospective assignee is a foreign national or foreign owned or controlled business entity, assignor and the proposed assignee shall jointly provide notice of the proposed transaction to CFIUS in accordance with applicable regulations

(subpart D of 31 CFR part 800) and provide a copy of the notice to the MILDEP. Nothing in this agreement shall prohibit or limit DoD from objecting to the transaction before CFIUS, nor limit communications with CFIUS during national security reviews, investigations, development of applicable National Security Agreements and subsequent mitigation, tracking, and post-transaction monitoring and enforcement, pursuant to any agreed upon National Security Agreements.

**C. Effect of Assignment.** Upon an assignment, assignor shall be relieved of any obligations or liabilities under this agreement to the extent that the assignee has assumed in writing such obligations or liabilities and provided that the Project Owner has provided a copy of the assignment, including the assumption of obligations and liabilities, to the DoD parties.

#### SECTION 7. EFFECTIVE DATE AND EXPIRATION.

**A. Effective Date.** This agreement becomes effective on the date when all parties have signed.

**B. Expiration.** This agreement shall expire and have no further force and effect upon the occurrence of the earlier of the following:

1. Construction of the Project has not commenced within the time prescribed under 14 CFR sections 77.33 and 77.35.
2. The Project is decommissioned.
3. The Installation closes and ceases all operations.
4. The DoD ceases testing and training in the project area and takes formal action to document this cessation.
5. Termination of the agreement by written mutual agreement of the parties.

**C. Actions Prior to Expiration.** Any activities engaged in by the parties that occurred prior to expiration of this agreement shall remain valid and continue in effect, notwithstanding the expiration of the agreement.

#### SECTION 8. POINTS OF CONTACT AND NOTIFICATION.

**A. Points of Contact (POCs).** The following persons shall be the primary POCs for the parties for purposes of this agreement. Any notice, request, or other communication to be provided pursuant to this agreement shall be delivered to the POCs. Any party may change its POC by providing written notification of the change to the other parties at least 30 days in advance of the change taking effect.

**1. DoD** – Executive Director, Military Aviation and Installation Assurance Siting Clearinghouse, 3400 Defense Pentagon, Room 5C646, Washington, DC 20301-3400

**2. MILDEP** – Office of the Commanding General, c/o Exec. Liaison Office, Fort Huachuca, 1903 Hatfield Street, Building 62711 (Alvarado Hall) Fort Huachuca, AZ 85613.

**3. Project Owner** – c/o VP of Engineering, Clenera, LLC, 800 W. Main Street, Suite 900, Boise, Idaho 83702.

**B. Notification.** Any written notice shall be sent by registered or certified mail, postage prepaid, sent by a nationally recognized overnight delivery service that provides a receipt for delivery, or hand delivered. A notice shall be deemed to be received when delivered to the recipient's address.

#### **SECTION 9. BREACH AND COMPENSATORY MITIGATION.**

**A. Dispute Resolution.** If a party believes that another party has breached this agreement, it shall provide written notice of the breach within 30 days of discovery of the breach to all other parties and provide the breaching party a reasonable opportunity (but in all cases at least 30 days from delivery of such notice) to cure the breach. Failure to provide notice within such 30-day period only waives the rights with respect to the periods from after the expiration of such 30-day period and until the date when the notice was given. If there is a dispute between the parties as to whether a breach occurred, the parties agree to attempt to resolve the dispute beginning with Project Owner and representatives of the MILDEP at the Installation. Disputes may be elevated, on the part of the DoD parties, to the MILDEP headquarters and then to the Executive Director of the Siting Clearinghouse. If the breach is not cured or resolved after this initial dispute resolution process, either party may seek to enforce this agreement. Each party specifically reserves any and all rights or causes of action it may have either at law or in equity to require compliance with any provision of this agreement. Each party reserves the right to enforce or refrain from enforcing against another party the terms of this agreement as it sees fit and failure to enforce does not constitute a waiver with respect to any future breaches.

**B. Voluntary Contributions in the Nature of Liquidated Damages as Compensatory Mitigation. [RESERVED]**

#### **SECTION 10. GENERAL PROVISIONS.**

**A. Amendments.** Any party to this agreement may request that it be amended, whereupon the parties agree to consult to consider such amendments. Any amendment to this agreement shall become effective when signed by all of the parties unless its terms provide for a different effective date. Amendments only providing substitute ASNs within the Project boundary need only be signed by the MILDEP's and a Project Owner's designated Project officers if filed with FAA within 12 months of the effective date of this agreement.



**B. Integration.** This agreement contains the entire agreement and understanding between the parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations by the parties with respect to such subject matter.

**C. Governing Law.** This agreement shall be governed by and construed in accordance with the laws of the United States and the State of Arizona, as may be applicable. A civil action brought by any Party for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought in the U.S. District Court for the District of Columbia.

**D. Interpretation.** In the event an ambiguity or question of intent or interpretation arises, this agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this agreement. Any reference to any Federal, state, interstate, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, as they may have been amended from time to time, unless the context requires otherwise.

**E. Headings and Titles.** The headings or section titles contained in this agreement are inserted solely for convenience and do not constitute a part of this agreement between the parties, nor should they be used to aid in any manner in the construction of this agreement.

**F. Severability.** If any term, provision, or condition of this agreement is held to be invalid, void, or unenforceable by a governmental authority and such holding is not or cannot be appealed further, then such invalid, void, or unenforceable term, provision, or condition shall be deemed severed from this agreement and all remaining terms, provisions, and conditions of this agreement shall continue in full force and effect. The parties shall endeavor in good faith to replace such invalid, void, or unenforceable term, provision, or condition with valid and enforceable terms, provisions, or conditions which achieve the purpose intended by the parties to the greatest extent permitted by law.

**G. Waivers; Remedies Cumulative.** There is no implied waiver of rights under this agreement. No failure or delay on the part of a party in exercising any of its rights under this agreement or in insisting upon strict performance of provisions of this agreement, no partial exercise by either party of any of its rights under this agreement, and no course of dealing between the parties shall constitute a waiver of the rights of any party under this agreement, other than the requirement to raise a matter of breach within 30 days of discovery. Any waiver shall be effective only by a written instrument signed by the party granting such waiver, and such waiver shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply with this agreement. The remedies provided in this agreement are cumulative and not exclusive of any remedies provided by law.

**H. CFIUS.** Nothing in this agreement shall relieve Project Owner or their successors or assigns from complying with 31 CFR part 800 (Mergers, Acquisitions, and Takeovers by Foreign Persons) nor prevent or limit the parties from communicating in any form with CFIUS.



**I. Anti-Deficiency.** For the DoD parties, this agreement is subject to the availability of appropriated funds and sufficient resources. No provision in this agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. section 1341.

**J. Disclosure.** The parties may freely disclose this agreement with any person or entity. DoD will post the agreement on the Siting Clearinghouse website. Project Owner may mark any part of any document it believes to be proprietary or competition sensitive and that it wants DoD or the MILDEP to exempt from disclosure. The DoD parties will only disclose any such marked information in accordance with the provisions of 5 U.S.C. section 552 (the Freedom of Information Act).

**K. No Third-Party Beneficiaries.** Nothing in this agreement, express or implied, is intended to give to, or shall be construed to confer upon, any person not a party any remedy or claim under or by reason of this agreement. This agreement shall be for the sole and exclusive benefit of the parties and their respective successors and assigns.

**L. Full and Complete Satisfaction.** The completion of the obligations of each of the parties under this agreement constitute the full and complete satisfaction of those obligations.

**M. Other Federal Agencies.** This agreement does not bind any Federal agency, other than the DoD parties, nor waive required compliance with any law or regulation.

**N. Completion of Construction.** Within 60 days of the completion of construction of the Project, Project Owner shall deliver to DoD copies of the FAA form 7460-2 for each ASN, including the final coordinates for each PV Panel erected.

**O. Grid Operator Protocols. [RESERVED]**

**P. Determination of National Security Risk.** If operations of the Babacomari Solar Project are subsequently determined to pose an unacceptable risk to National Security or Defense Purpose, MILDEP will provide such notice to the Project Owner. The Project Owner will provide a Security Risk Mitigation Plan to the MILDEP within 30 days, for review and approval. Both parties will work together in good faith to achieve and implement an agreed upon Security Risk Mitigation Plan.

*[Continued on following page]*

**Q. Signature/Counterparts.** The parties represent and warrant that the signatories below have authority to sign on behalf of and bind each respective party, and that no other signature is required to bind that party. This agreement may be executed in several counterparts, each of which shall be deemed an original, all of which shall constitute but one and the same instrument.

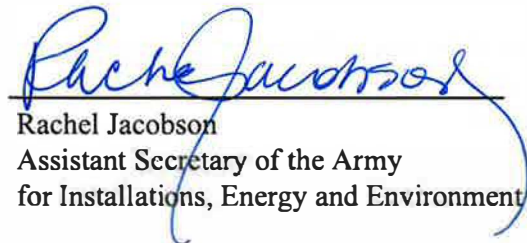
**IN WITNESS WHEREOF**, the parties have executed and delivered this agreement.

**FOR THE DEPARTMENT OF DEFENSE**

\_\_\_\_\_  
Brendan M. Owens  
Assistant Secretary of Defense for  
Energy, Installations, and Environment

\_\_\_\_\_  
Date


**FOR THE DEPARTMENT OF THE ARMY:**

  
\_\_\_\_\_  
Rachel Jacobson  
Assistant Secretary of the Army  
for Installations, Energy and Environment

Nov 2, 2023  
Date

**FOR BABACOMARI SOLAR NORTH LLC:**

Babacomari Solar North LLC  
By: CRE-Babacomari Arizona LLC, its Sole Member  
By: Parasol Renewable Energy Holdings LLC,  
its Sole Member  
By: Parasol Renewable Energy LLC, its Manager  
By: Solis LLC, its Managing Member

By:   
\_\_\_\_\_  
Name: Jason Ellsworth  
Title: Manager  
Date: Aug 21, 2023  
\_\_\_\_\_

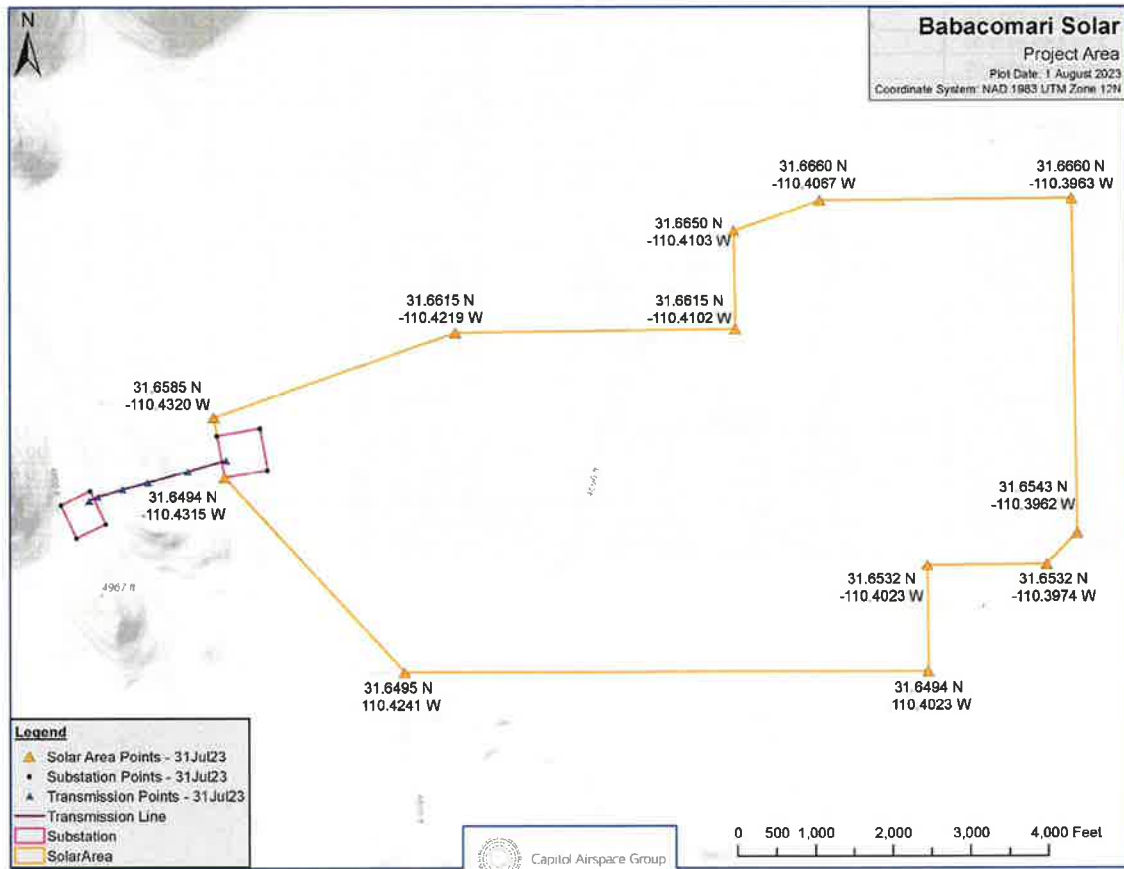
## ATTACHMENT [A]:

### Federal Aviation Administration Solar Panel Filings

ASN	Structure Name	Structure Type	City	State	Height (AGL)	Lat_DD	Lon_DD
2023-AWP-6971-OE	1	Solar Panel Array	Whetstone	AZ	15	31.6585	-110.4320
2023-AWP-6972-OE	2	Solar Panel Array	Whetstone	AZ	15	31.6615	-110.4219
2023-AWP-6973-OE	3	Solar Panel Array	Whetstone	AZ	15	31.6615	-110.4102
2023-AWP-6974-OE	4	Solar Panel Array	Whetstone	AZ	15	31.6650	-110.4103
2023-AWP-6975-OE	5	Solar Panel Array	Whetstone	AZ	15	31.6660	-110.4067
2023-AWP-6976-OE	6	Solar Panel Array	Whetstone	AZ	15	31.6660	-110.3963
2023-AWP-6977-OE	7	Solar Panel Array	Whetstone	AZ	15	31.6543	-110.3962
2023-AWP-6978-OE	8	Solar Panel Array	Whetstone	AZ	15	31.6532	-110.3974
2023-AWP-6979-OE	9	Solar Panel Array	Whetstone	AZ	15	31.6532	-110.4023
2023-AWP-6980-OE	10	Solar Panel Array	Whetstone	AZ	15	31.6494	-110.4023
2023-AWP-6981-OE	11	Solar Panel Array	Whetstone	AZ	15	31.6495	-110.4241
2023-AWP-6982-OE	12	Solar Panel Array	Whetstone	AZ	15	31.6564	-110.4315
2023-AWP-11671-OE	SS-1	Substation	Whetstone	AZ	88	31.6564	-110.4315
2023-AWP-11672-OE	SS-2	Substation	Whetstone	AZ	88	31.6579	-110.4318
2023-AWP-11673-OE	SS-3	Substation	Whetstone	AZ	88	31.6581	-110.4300
2023-AWP-11674-OE	SS-4	Substation	Whetstone	AZ	88	31.6567	-110.4297
2023-AWP-11675-OE	SS-5	Substation	Whetstone	AZ	88	31.6555	-110.4383
2023-AWP-11676-OE	SS-6	Substation	Whetstone	AZ	88	31.6560	-110.4371
2023-AWP-11677-OE	SS-7	Substation	Whetstone	AZ	88	31.6548	-110.4365
2023-AWP-11678-OE	SS-8	Substation	Whetstone	AZ	88	31.6543	-110.4377
2023-AWP-12874-OE	HV Pole 4 Substation Deadend	Transmission Line Tower	Whetstone	AZ	150	31.6570	-110.4315
2023-AWP-12875-OE	HV Pole 5	Transmission Line Tower	Whetstone	AZ	150	31.6566	-110.4331
2023-AWP-12876-OE	HV Pole 6	Transmission Line Tower	Whetstone	AZ	150	31.6562	-110.4347
2023-AWP-12877-OE	HV Pole 7	Transmission Line Tower	Whetstone	AZ	180	31.6560	-110.4358
2023-AWP-12878-OE	HV Pole 8	Transmission Line Tower	Whetstone	AZ	180	31.6558	-110.4368
2023-AWP-12262-OE	TEP H-Frame	Transmission Line Tower	Whetstone	AZ	90	31.6556	-110.4372

# ATTACHMENT [B]:

## Babacomari Solar Project Area








# 10624 Babacomari Solar Project Mitigation Agreement\_Execution PDF\_082123.pdf

Final Audit Report

2023-08-21

Created:	2023-08-21
By:	Clenera LLC (systems.admin@clenera.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAQMqvd9oogfj_5osLdx6PDboPhEAxulgp

## "10624 Babacomari Solar Project Mitigation Agreement\_Execution PDF\_082123.pdf" History

-  Document created by Clenera LLC (systems.admin@clenera.com)  
2023-08-21 - 6:16:02 PM GMT- IP address: 20.169.18.236
-  Document emailed to Jason Ellsworth (jason@clenera.com) for signature  
2023-08-21 - 6:16:07 PM GMT
-  Email viewed by Jason Ellsworth (jason@clenera.com)  
2023-08-21 - 7:28:05 PM GMT- IP address: 160.2.142.18
-  Document e-signed by Jason Ellsworth (jason@clenera.com)  
Signature Date: 2023-08-21 - 7:28:11 PM GMT - Time Source: server- IP address: 160.2.142.18
-  Agreement completed.  
2023-08-21 - 7:28:11 PM GMT

