

PROPOSED DRAFT

DEVELOPMENT AGREEMENT

Between

KITTITAS COUNTY WASHINGTON

and

TEANAWAY SOLAR RESERVE, LLC

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DEVELOPMENT AGREEMENT
TEANAWAY SOLAR RESERVE PROJECT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into and effective this ____ day of ____, 2010 by and between Kittitas County, a Washington municipal corporation ("County") and Teanaway Solar Reserve, LLC, a Wyoming limited liability company authorized to do business in the state of Washington ("Applicant") (collectively, the "Parties"). This Agreement is made pursuant to Revised Code of Washington ("RCW") 36.70B.170, Kittitas County Code ("KCC") Chapter 15A.11, and KCC Chapter 17.61, and relates to the Teanaway Solar Reserve Project.

RECITALS

A. RCW Chapter 36.70B, and KCC Chapter 15A.11 authorize the County to enter into an agreement regarding development of real property located within the County's jurisdiction with any person having an ownership interest in or control of such real property.

B. The Applicant desires and intends to develop a solar farm in Upper Kittitas County known as the Teanaway Solar Reserve Project (the "Project") located approximately four miles northeast of the town of Cle Elum. Key components and related appurtenant improvements of the Project include solar modules, inverter buildings, underground electrical conductors, substation, transmission line, maintenance and access roads, and an Operations and Maintenance (O&M) building.

C. The Applicant's objective is to develop a commercially viable solar energy facility generating up to 75 megawatts (MWdc) of photovoltaic (PV) for distribution to utilities and communities seeking to optimize their renewable and sustainable energy sources through an interconnection point on the Pacific Northwest power grid.

D. The Project will be located on land referred to herein as the "Project Area". The Applicant entered into agreements with the owners of approximately 982 acres of real property comprising the Project Area, giving it requisite control of this land for the purpose of, and authority to, develop the Project. The Project Area is as more specifically described in Attachment A: Project Area Legal Description. A map showing the location of the Project Area is contained in Attachment E: Proposed Site Layout.

E. The construction of the Project is currently scheduled for two to three

consecutive construction seasons between the years 2010 through 2012. As fully constructed, the Project is anticipated to require approximately 477 acres ("Project Site") within the overall Project Area. A site plan showing the location and layout of the Project is contained in Attachment E: Proposed Site Layout.

F. A solar farm is defined by the County as a "major alternative energy facility". KCC 17.61.010(9) & (15). The transmission line and electrical substation may also be considered "special utilities." KCC 17.61.010(2). Major alternative energy facilities and special utilities may be authorized for the Project Site by the County's Board of Adjustment ("BOA") as conditional uses following a 15-day comment period and hearing, per KCC Chapter 15.61, KCC Title 15A, and KCC Chapter 17.60A.

G. In conjunction with this Agreement, the Applicant submitted a Conditional Use Permit ("CUP") Application as required by KCC 15.61.020(4)(b) & (6). One of the expected conditions of the CUP is that Applicant will obtain an approved development agreement with the County, and that it will be conditioned and governed by this Agreement.

H. The Applicant's submissions were deemed complete by the County on August 22, 2009. As the State Environmental Policy Act ("SEPA") Lead Agency, Kittitas County issued a Mitigated Determination of Non-significance ("MDNS") for the Project on July 15, 2010. The SEPA determination is attached hereto as Attachment B. Applicant agrees to abide by the CUP, the SEPA Mitigation Measures identified in the MDNS, and the Development Standards set forth in this Agreement to mitigate impacts to the environment.

I. The CUP was the subject of a 15-day comment period and a hearing before the Board of Adjustment as required by KCC Title 15A. On - ___, 2010, the Board of Adjustment ("BOA") voted ___ to ___ to approve the CUP. The CUP is attached hereto as Attachment C.

J. As required by KCC Title 15A and accompanying Table A, and RCW 36.70B.200., this Agreement was the subject of a 30-day comment period and a hearing before the Kittitas County Board of County Commissioners ("BOCC") was held on _____, 2010, and it voted ___ to ___ enter into this Agreement.

NOW, THEREFORE, in consideration of the recitals (which are incorporated into the Agreement by this reference) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Applicant agree as follows:

AGREEMENT

1. Effective Date, Termination and Modification.

1.1 Effective Date. The Effective Date of this Agreement is the last date upon which it was signed by the Parties hereto.

1.2 Termination. This Agreement may be terminated by mutual agreement of the Parties to this Agreement, or terminated by Applicant pursuant to Section 8 of this Agreement, or by the County upon revocation, withdrawal or termination of the underlying CUP as per KCC 17.60A.100.

1.3 Modification. This Agreement shall govern and vest the development, use, and mitigation of the Project, and shall not be modified unless as provided in Section 7 below; *Provided* that nothing herein shall be construed to limit the County's reserved authority per KCC 15A.11.020(6) to impose new or different regulations to the extent required by a serious threat to public health and safety.

2. Definitions.

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. Unless otherwise specified herein, references to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force.

2.1. Agreement. "Agreement" means this Development Agreement between Kittitas County, Washington and Teanaway Solar Reserve, LLC, approved by the Board of County Commissioners.

2.2. Applicant. "Applicant" means Teanaway Solar Reserve, LLC or any of its Transferee(s) as provided in Section 9 of this Agreement.

2.3. BOCC. "BOCC" means the Board of County Commissioners of Kittitas County, Washington.

2.4. BOA. "BOA" means Kittitas County Board of Adjustment.

2.5. CDS. "CDS" means the Kittitas County Community Development Services.

2.6. County. "County" means Kittitas County, Washington.

2.7. Construction Buildout Period. "Construction Build out Period" has the meaning set forth in Section 5.9 of this Agreement.

2.8. CUP. "CUP" means the Conditional Use Permit approved by the County's BOA for the Project, which shall be conditioned and governed by this Agreement.

2.9. Development Standards. "Development Standards" means the requirements stated in Section 5 of this Agreement.

2.10. Director. "Director" means the Director of the County Department of Community Development Services.

2.11. Effective Date. "Effective Date" has the meaning set forth in Section 1.1 of this Agreement.

2.12. Force Majeure Event. "Force Majeure Event" means any event beyond the control of the affected Party that directly prevents or delays the performance by such Party of any obligation arising under this Agreement, including an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to the Project caused by third Parties; riot or similar civil disturbance or commotion; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism; embargoes; and, actions of a governmental or judicial authority other than EFSEC.

2.13. Historical Energy Production. "Historical Energy Production" means the sum of

all energy generated by the Project after Substantial Completion divided by the total number of months of operation after Substantial Completion and the remaining sum multiplied by twelve.

2.14. Liability. "Liability" means all loss, damage, cost, expense (including costs of investigation and attorneys' fees and expenses at arbitration, trial or appeal and without institution of arbitration or suit), liability, claims and demands of whatever kind or nature (including those arising under the Federal Employers Liability Act), arising out of an occurrence relating to this Agreement or occurring on or relating to the Project described herein.

2.15. MDNS. "MDNS" means the Mitigated Determination of Non-significance issued as a SEPA determination by Kittitas County for the Project on July 15, 2010.

2.16. Parties. "Parties" means Kittitas County, Washington and the Applicant, Teanaway Solar Reserve, LLC, a Wyoming limited liability company.

2.17. Project. "Project" means the Teanaway Solar Reserve Project, a solar farm generating up to 75 megawatts (MWdc) of photovoltaic (PV) solar energy, together with any necessary Project components and related appurtenant improvements, including approximately 400,000 solar panels, inverter buildings, underground electrical conductors, substation, transmission line, maintenance and access roads and an Operations and Maintenance (O&M) building. The Project and its components are as further defined in Attachment B: Mitigated Determination of Nonsignificance, Attachment C: Conditional Use Permit [PLACEHOLDER], and in this Agreement.

2.18. Project Area. "Project Area" means the overall land area in which the Project Site will be located. The Project Area covers approximately 982 acres. A map depicting the location of the Project Area is contained in Attachment E: Proposed Site Layout. The land within the Project Area is as more specifically described in Attachment A: Project Area Legal Description.

2.19. Project Site. "Project Site" means the land area on which the Project will actually be sited. The Project Site covers approximately 477 acres. A map showing the approximate location of the Project Site is contained in Attachment E: Proposed Site Layout.

2.20. Public Works. "Public Works" means the Kittitas County Public Works Department.

2.21. SEPA. "SEPA" means the State Environmental Policy Act, Chapter 43.21C RCW.

2.22. Substantial Completion. "Substantial Completion" means the Project is constructed, installed, generating and delivering energy to the electric power grid.

2.23. Transferee. A party to which the Project is transferred or assigned in part or in whole under the provisions contained in Section 9.1 of this Agreement.

3. Project Description

The Project is a proposed solar farm, along with other necessary components and related appurtenant improvements, capable of generating up to 75 megawatts (MWdc) of photovoltaic (PV) solar energy, modified as necessary in accordance with the Development Standards contained herein, the CUP, and the proposed SEPA MDNS mitigation measures.

4. Vesting

Except as otherwise noted, this Agreement vests the Project, Project Site, and Project Area to the existing County land use plans, ordinances, and regulations effective as of the Effective Date of this Agreement until the termination of this Agreement under Section 1.2, or Applicant has fulfilled its Decommissioning and Restoration obligations under Section 6, whichever occurs later.

5. Development Standards

5.1. Location and Description of Project. The Project is as described herein and in Attachment B: Mitigated Determination of Nonsignificance and Attachment C: Conditional Use Permit [PLACEHOLDER], and illustrated in Attachment E: Proposed Site Layout, modified as necessary in accordance with this Agreement's Development Standards, CUP, and SEPA mitigation measures contained in the MDNS.

5.2 Structures. As part of the Project, Applicant may require supporting structures for any related transmission line. Such structures shall not be subject to any applicable County height restriction, provided that any supporting structure shall not exceed 150 feet unless Applicant first obtains a variance from the County under KCC 17.84.

5.3. Fire Protection Measures. Applicant will create and maintain a firebreak of no

less than 100 feet between all outer edges of the Project Site and adjacent property lines, as illustrated in Attachment E: Proposed Site Layout. Applicant has executed a fire protection services agreement with Kittitas County Fire Protection District No. 7 for the Project to ensure that suitable fire protection services are in place during the construction and on-going operations of the Project. A copy of this fire protection services agreement is contained in Attachment D attached hereto. A fire protection services agreement shall be maintained for the life of the Project, or until the Project Area is annexed into a Fire District or municipal entity which provides fire protection services.

5.4. Setbacks. The Project may be located up to, but no less than, 100 feet from any bordering property as illustrated in Attachment E: Proposed Site Layout.

5.5. Emergency Plans. An emergency preparedness and response plan shall be prepared and submitted to the County by the Applicant prior to construction.

5.6. Project Access and Maintenance Roads. Access to the Project Site will be achieved via Red Bridge Road. Red Bridge Road will be accessed from the southwest entrance, directly from SR 970. From Red Bridge Road traffic will follow Wiehl Road northbound for approximately 0.2 mile to Loping Lane (a private road). Traffic will follow Loping Lane westbound to the Project Site. Any detours from this pre-approved route as a result of road closures or other disruptions must be approved by Public Works.

The MDNS requires that portions of Loping Lane and Wiehl Road be improved. The Parties recognize that Loping Lane and Wiehl Road are existing roads that do not presently meet County Road requirements and that the existing configuration of these roads may make it difficult or impracticable to widen them in some places. In the event the existing configuration of Loping Lane and Wiehl Road necessitate a deviation from the specified road standards set forth in the MDNS, and the Applicant is unable to reach agreement with the County Engineer on an alternative road design, Applicant may seek a variance in conformance with the Kittitas County Code (KCC 12.01.130).

Roads within the Project Site will generally adhere to the Proposed Site Layout attached as Attachment E to this Agreement subject to the minor modification provision in paragraph 7.3 of this Agreement. Roads within the Project Site shall be designed and constructed in accordance with Table 12-1 of the Kittitas County Road Standards for Private Roads for Joint-Use Driveways except as expressly provided as follows:

5.6.1. All roads within the project site shall be constructed with a minimum 1 foot gravel shoulder;

5.6.2. Primary Roads within the Project site, as depicted on Attachment E to this Agreement, shall be a minimum 20 feet in width;

5.6.3. Secondary Roads within the project site, as depicted in Attachment E to this Agreement, shall be a minimum of 16 feet in width and shall be constructed to have an emergency turnout every 1000 feet, or if the section of road is less than 2,000 feet, in the middle of the road section. Turnouts on the secondary roads shall consist of an additional 5 feet of width (for a total of 21 feet) for 50 feet in length; and

5.6.4. All corners and intersections shall have a minimum radius of 28 feet.

5.7. The Relationship between this Agreement and the CUP. This Agreement incorporates by reference the terms and conditions of the CUP as approved by the BOA, which shall be further conditioned and governed by this Agreement. In the event a conflict should occur between the CUP and this Agreement, the terms and provisions of this Agreement shall control.

5.8. Project Site Access. Public access to the Project Area is already restricted by the subject landowners and will continue to be restricted in accordance with easement agreements. Access to the Project Site shall be further controlled in the form of an electric gate with an associated keypad security code for entry. The Applicant shall be responsible for the installation and maintenance of the gate, and will work with applicable landowners to determine its appropriate location. Property owners who access their property from Loping Lane and may require access through the gate will be provided the necessary and applicable access. Representatives of the Washington State Department of Natural Resources currently has access to and through the Project Site and will continue to be allowed access. The Applicant will also coordinate with local landowners to identify any necessary additional security measures, including an additional access restriction on Loping Lane near its intersection with Wiehl Road. The Applicant does not have the authority to grant permission to all third party recreationists, including hunters and campers, to access the Project, but may grant permission to such parties on a case-by-case basis provided such parties first secure written permission from all of the applicable landowners along Loping Lane.

5.9. Construction Buildout Period. Applicant shall be allowed to construct the Project such that Substantial Completion is achieved no later than 5 years from the date that all permits

necessary to construct the Project are obtained in final form, but in no event later than 6 years from the Effective Date of this Agreement (the "Construction Buildout Period") provided however, that such construction is not delayed by a Force Majeure Event.

6. Decommissioning and Restoration.

6.1. Initial Project Decommissioning and Site Restoration Plan. Within 30 days from the Effective Date of this Agreement, Applicant shall provide to the County for its review and approval an Initial Project Decommissioning and Site Restoration plan (the "Initial Plan"), prepared in sufficient detail to identify, evaluate, and resolve all major environmental, and public health and safety issues reasonably anticipated by the Applicant on the date thereof associated with decommissioning and restoring the Project Site. Failure by the County to respond within thirty (30) days after receipt of the Initial Plan shall be deemed to be the County's approval of the Initial Plan. The Initial Plan shall describe the measures that will be taken to decommission the Project and restore the Project site, including any measures necessary to protect the public against risks or danger resulting from decommissioning the Project and restoring the Project Site. Construction of the Project shall not commence until the County's approval of the Initial Plan, which approval shall not be unreasonably withheld. For purposes of Section 6 of this Agreement, "Construction" shall be construed consistent with Section VIII of the MDNS (i.e., excluding site preparation activities).

6.2 Final Project Decommissioning and Site Restoration Plan. Ninety days prior to decommissioning the Project Site, Applicant shall submit a Final Project Decommissioning and Site Restoration Plan ("Final Plan") to the County for its approval, which approval will not be unreasonably withheld. Failure by the County to respond within thirty (30) days after receipt of the Final Plan shall be deemed to be the County's approval of the Final Plan. The Final Plan may contain measures to decommission the Project and restore the Project Site different than the Initial Plan, *provided* that Applicant explains in sufficient detail the reasons for any new or substantially different measures.

6.3. Decommissioning and Restoration: Scope and Timing.

6.3.1 Scope of Decommissioning. Decommissioning the Project shall involve removal of the Project's components, including, without limitation, the solar panels, panel trackers, anchors, supports and mounts, inverter buildings, underground electrical conductors, substation, and Operations and Maintenance (O&M) building, and any

foundations or permanently fixed anchors; the re-grading of any areas significantly impacted by the removal of any components; removal of Project maintenance roads and overhead cables (except for any roads, buildings, and/or power cables that Project Area landowners wish to retain); and final reseeding of disturbed lands with a native seed mixture (all of which shall comprise "Decommissioning"). The Initial and Final Plans shall contain the measures necessary to fulfill Applicant's Decommissioning obligations.

6.3.2. Scope of Restoration. Restoration of the Project Site shall be to a reasonable approximation of its original condition prior to construction allowing for any permanent improvements chosen by the underlying landowners to be left on site as provided in Section 6.3.1. The Initial and Final Plans shall contain the measures necessary to fulfill Applicant's Restoration obligations.

6.3.3. Timing; Exemptions and Extension. Applicant or any Transferee, as the case may be, shall decommission the Project and restore the Project Site within twelve (12) months following the earlier of either: (a) the date of termination of this Agreement, in accordance with Section 1.2 above; or (b) within thirty days of the Applicant receiving a written request by the County, Applicant demonstrates that the energy generated by the Project for the past twenty-four (24) month period is less than 10% of the Historical Energy Production and no exemptions apply. Applicant shall prepare and maintain at all times during the life of the Project all records and data necessary to establish the Historical Energy Production of the Project. Applicant shall allow the County access to such records and data upon County's written notice as provided herein. The Applicant will be exempted from the decommissioning and restoration requirements if the twenty-four (24) month reduced energy output period described above is the result of (i) a repair, restoration or improvement to an integral part of the Project that affects the generation of electricity that is being diligently pursued by the Applicant, or (ii) a Force Majeure Event. The twelve (12) month period to perform the decommissioning and restoration may be extended for one additional twelve (12) month period if there is a delay caused by forces beyond the control of the Applicant including, but not limited to inclement weather conditions, planting requirements, equipment failure, wildlife considerations or the availability of equipment or personnel to support decommissioning, or a Force Majeure Event.

6.3.4. County Access and Reporting. The County shall be granted reasonable

access to the Project site during decommissioning of the Project for purposes of inspecting any decommissioning work or to perform decommissioning evaluations. County personnel on the Project site shall observe all worker safety requirements enforced and observed by the Applicant and its contractors. If requested by the County, Applicant will provide monthly status reports until this decommissioning work is completed.

6.4 Decommissioning and Restoration Funding and Surety. Except as provided in Section 6.5 below, Applicant or any Transferee, as the case may be, shall post a Performance Bond as described in 6.4.1 below to ensure the availability of funds to cover Applicant's Decommissioning and Restoration obligations. The Applicant shall deliver the Performance Bond to Kittitas County, prior to the start of construction. The Initial Plan shall provide the estimated costs of Applicant's Decommissioning and Restoration obligations. The Initial Plan shall also provide that such estimated costs shall be reevaluated annually during construction of the Project and every five (5) years thereafter from the date of Substantial Completion to ensure sufficient funds for Decommissioning and Restoration and, if deemed appropriate at that time, the amount of the Performance Bond shall be adjusted accordingly. On or before the date on which financial security must be established, the Applicant or any Transferee, as the case may be, shall provide the County with a copy of the following security device:

6.4.1 Performance Bond. Applicant or any Transferee, as the case may be, shall provide financial security for the performance of its Decommissioning and Restoration obligations through a Performance Bond issued by a surety registered with the Washington State Insurance Commissioner and is, at the time of delivery of the bond, is on the authorized insurance provider list published by the Insurance Commissioner. The Performance Bond shall be in an amount equal to 110% of the estimated costs for Applicant's Decommissioning and Restoration obligations provided in the Initial Plan. The Performance Bond shall be for a term of 1 year, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of this Agreement or until the secured decommissioning obligations are satisfied, whichever occurs later. In order to ensure continuous renewal of the Performance Bond with no lapse, each Performance Bond shall be required to be extended or replaced at least one month in advance of its expiration date. Failure to secure such renewal or extension shall constitute a default of the Applicant under this Agreement and under the Bond provisions.

6.5. Financial Security and Utility Project Ownership. If, at the time the duty to provide Decommissioning and Restoration security arises under Section 6.3 above, the owner of the Project is an investor-owned electric utility regulated by the Federal Energy Regulatory Commission (FERC) and the Washington Utilities and Transportation Commission (WUTC), Applicant or any Transferee, as the case may be, shall not be required to obtain and provide proof of financial security for the performance of its Decommissioning and Restoration obligations arising hereunder, since the obligation to fully decommission the Project and restore the Project Site when due shall be a general obligation of the investor-owned electric utility owner.

7. Amendments and Revisions.

This Development Agreement may be amended by mutual agreement of the Parties only if the amendment is in writing and signed by Applicant and the County and is approved by the BOCC (an "Amendment"), whose approval shall not unreasonably be withheld. The following sections specify what Project actions and revisions can be undertaken without the need for amendment of the Development Agreement and what revisions require Amendment to this Agreement and the CUP.

7.1 Project Facility Repair, Maintenance and Replacement. Applicant shall be permitted, without any further land use approval from the County or Amendment to this Agreement, to repair, maintain and replace the Project and its components consistent with the terms of this Agreement.

7.2 Project and Project Area Expansion. Except as provided in Section 7.3 below, if Applicant seeks to expand the generating capacity of the Project and the geographic scope of the Project Site or Project Area, Applicant will seek an Amendment to this Agreement and amend the CUP, if and as necessary, in accordance with this Agreement and any applicable state and local regulations in effect at the time of such amendments. The Applicant acknowledges that further SEPA review may be required if the criteria for such is met as set forth in Kittitas County Code Chapter 15.04 (SEPA Regulations).

7.3 Authorized Changes, Enlargements, or Alterations

7.3.1. As set forth below, County staff may review and approve certain minor changes, enlargements or adjustments ("Changes") to the Project in their respective

administrative capacities. The following types of Changes are considered minor, provided that no such Changes shall directly or indirectly result in significantly greater impacts than those contemplated in the approval of the CUP and this Agreement. Any other Changes to the Project shall be processed as applicable before the BOA in accordance with KCC 17.60A.020, and before the BOCC in accordance with KCC Chapter 15A.11.

7.3.1.1. The proposed change does not add to the Project design that would result in a greater than a 5 percent increase in solar power generation over 75 MWdc of PV solar energy.

7.3.1.2. The proposed change does not increase the overall approved impervious surface on the site by more than 10 percent over the amount currently estimated for the Project.

7.3.1.3. Any resulting changes as a consequence of obtaining or complying with a federal, state, or local permit or approval, including those identified in Attachment B to this Agreement.

7.3.1.4. Other *de minimis* changes requested by the Applicant, which are reasonably consistent with the CUP.

7.3.2. Substation and Transmission Line: The Parties acknowledge that the final siting of the substation and transmission line is dependent upon site characteristics, BPA ownership and control of the subject special utilities, and BPA design requirements. Applicant shall provide the County with written notice in the event that the substation and/or transmission line will be sited in a location other than that identified on the site plan. The County agrees that any siting change of the substation and/or transmission line will constitute a minor change under paragraph 7.3 of this Agreement provided Applicant presents evidence to the County of its ownership or control over the property where the substation and transmission line will be located, evidence that the relocation will not have a significant impact on the environment (including wildlife, cultural resources, and wetlands), and evidence that the new location will not result in greater impacts than those contemplated in the CUP approval and this Agreement.

8. Termination.

Applicant shall have the option, in its sole discretion, to terminate this Agreement prior to Substantial Completion of the Project, *Provided* such termination will not relieve the Applicant of any obligation owed the County under the terms of this Agreement and outstanding at the time of such termination. If it elects to terminate this Agreement, Applicant shall submit a Notice to this effect to Kittitas County at least thirty (30) days prior to such termination.

9. General Provisions.

9.1 Assignment. The County and Applicant acknowledge that development of the Project may involve the sale and/or assignment of all or substantially all of the assets or all or substantially all of the membership interests to third parties. In addition the County and Applicant acknowledge that Applicant and its permitted Transferees may obtain financing for all or a portion of the costs of the Project. Applicant shall have the right to assign or transfer all or any portion of its interest in the Project at any time, including rights, obligations and responsibilities arising hereunder, to third parties acquiring all or substantially all the assets of the Project or all or substantially all the membership interests in Applicant (each such third party, a "Transferee"), provided such assignments or transfers are made in accordance with the following:

9.1.1 Assignments or Transfers Requiring the Consent of the County.

Applicant may at any time enter into a written agreement with a Transferee other than those described in Sections 9.1.2 and 9.1.3 to transfer all or substantially all the assets of the Project or all or substantially all the membership interests in Applicant, including rights, obligations and responsibilities arising hereunder (such agreement, a "Transfer Agreement"); provided that Applicant obtains the prior written consent of the County as described in this section:

9.1.1.1. Such Transfer Agreement shall not take effect unless and until the County has consented in writing to such transfer or assignment, which consent shall not be unreasonably withheld, conditioned, or delayed. Written notice of the proposed Transfer Agreement shall be mailed, first-class, to the County at least thirty (30) days in advance of the proposed date of transfer or assignment. Failure by the County to respond within thirty (30) days after receipt

of a request made by Applicant for such consent shall be deemed to be the County's approval of the Transfer Agreement.

9.1.1.2. Any Transfer Agreement shall be binding on the Applicant, the County and the Transferee. Upon approval of a Transfer Agreement by the County, the Applicant shall be released from those obligations and responsibilities assumed by the Transferee therein.

9.1.1.3. Applicant shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a Transferee pursuant to an approved Transfer Agreement. No breach or default hereunder by any person that assumes any portion of Applicant's obligations under this Agreement pursuant to an approved transfer shall be attributed to Applicant, nor shall any of Applicant's remaining rights hereunder be cancelled or diminished in any way by any such breach or default.

9.1.1.4. No breach or default hereunder by Applicant shall be attributed to any person succeeding to any portion of Applicant's rights or obligations under this Agreement, nor shall such Transferee's rights be cancelled or diminished in any way by any such breach or default.

9.1.1.5. Upon any transfer made in accordance with this Section 9.1.1 for which the County has consented, the Transferee shall be entitled to all interests and rights and be subject to all obligations under this Agreement, and Applicant shall be automatically released of all liabilities and obligations under this Agreement as to that portion of its interest so transferred or assigned.

9.1.2 Collateral Assignments Without the Consent of the County.

Notwithstanding anything herein to the contrary, Applicant or any Transferee shall be permitted to collaterally assign its interest in the Project to a lender providing financing for the Project without the consent of the County, provided that Applicant or any Transferee delivers written notice to the County at least thirty (30) days prior to the date of such collateral assignment and identifies such lender.

9.1.3 Assignments or Transfers without the Consent of the County.

Applicant may transfer or assign all or any portion of its interest in the Project at any time, including rights, obligations and responsibilities arising hereunder, to third parties acquiring all or substantially all the assets of the Project or all or substantially all the membership interests in Applicant without the consent of the County provided that:

(a) Transferee is (i) an investor-owned electric utility regulated by the Federal Regulatory Energy Commission ("FERC") and the Washington Utilities and Transportation Commission ("WUTC") or a wholly owned subsidiary of such an investor-owned electric utility, or; (ii) an entity having, at the time of transfer or assignment, a senior unsecured long term debt rating ("Credit Rating") of (1) if such entity has a Credit Rating from Standard and Poor's but not from Moody's, BBB- or better from Standard and Poor's or (2) if such entity has a Credit Rating from Moody's but not from Standard and Poor's, Baa3 or better from Moody's or (3) if such entity has a Credit Rating from both Standard and Poor's and Moody's, BBB- or better from Standard and Poor's and Baa3 or better from Moody's; and

(b) Transferee agrees to be bound by the rights, obligations and responsibilities of Applicant hereunder, on and after the date of such transfer or assignment. In the event that Applicant transfers or assigns all or any portion of its interest in and to the Project in accordance with this provision, Applicant shall be released from all obligations or liabilities under this Agreement on and after the date of such transfer or assignment as to that portion of Applicant's interest so transferred or assigned.

9.2 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring all or any portion of the Project, any lot, parcel or any portion thereof within the Project Area, or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever.

9.3 Washington Law. This Agreement is entered into under the laws of the State of Washington, and the parties hereto intend that Washington law shall apply to the interpretation hereof.

9.4 Severability. If any provisions of this Agreement are determined to be

unenforceable or invalid, this Agreement shall thereafter be modified, to implement the intent of the Parties to the maximum extent allowable under law and the remainder of this Agreement shall remain unaffected and in full force and effect.

9.5 Authority. Each Party represents and warrants that it has the respective power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to execute, deliver and perform its obligations under this Agreement.

9.6 No Third-Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

9.7 Duty to Act Reasonably and in Good Faith. Unless otherwise expressly provided, each party shall act reasonably in giving consent, approval, or taking any other action under this Agreement. The Parties agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement and each of them covenants that it will not at any time voluntarily engage in any actions which frustrate the purpose and intent of the Parties to develop the Project in conformity with the terms and conditions specified in this Agreement. The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. The Parties agree to use best efforts to communicate regarding issues, changes, or problems that arise in the performance of the rights, duties and obligations hereunder as early as possible in the process, and not wait for explicit due dates or deadlines. Each party agrees to work cooperatively and in good faith toward resolution of any such issues.

9.8 Time of Essence. Time is of the essence in the performance of each and every obligation to be performed by the Parties hereto.

9.9 Staffing Agreement for County Project Costs. The Applicant will pay for County costs, including third party consultant costs, if necessary, incurred to support plan review and inspection of the Project during construction, in accordance with K.C.C. 14.04 et. al., under a County Staffing Agreement. The Staffing Agreement shall include any additional building and other permit review and inspection costs not covered by the underlying permit fees, including those costs by CDS, Public Works Department, Public health Department, Information Services, and the County Prosecutor's Office. The Staffing Agreement shall be approved by the County as to form and content prior to construction, and such approval shall not be unreasonably

withheld.

10. Notices.

10.1 Written Notice. Any notice, demand, or other communication ("Notice") given under this Agreement shall be in writing and given personally or by registered or certified mail (return receipt requested). A courtesy copy of the Notice may be sent by facsimile transmission.

10.2 Addresses. Notices shall be given to the Parties at their addresses set forth below.

If to the County: Kittitas County Community Development Services
411 North Ruby, Suite 2
Ellensburg, Washington 98926
Attn: Director

CC: Kittitas County Prosecuting Attorney's Office
205 West Fifth, Room 213
Ellensburg, Washington 98926
Attn: Neil Caulkins

If to Applicant: Teanaway Solar Reserve, LLC
418 E. 1st, Suite B
Cle Elum, WA 98922

CC: Perkins Coie LLP
Attention: Patrick W. Ryan
1201 Third Ave, Suite 4800
Seattle, WA 98109
Fax: 206-359-9662

10.3 Notice by hand delivery shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered forty-eight (48) hours after deposited. Any party at any time by Notice to the other party may designate a different address or person to which such notice or communication shall be given.

11. Default and Remedies.

No party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of thirty (30) days after written notice of default from the other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of

the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure of the alleged default.

11.1 Dispute Resolution Process.

11.1.1. Conference. In the event of any dispute relating to this Agreement, each Party, upon the request of the other Party, shall meet within seven (7) calendar days to confer and seek to resolve the dispute ("Conference"). The Conference shall be attended by the following parties: (a) the County shall send department director(s) and County employees and contractors with information relating to the dispute, and (b) Applicant shall send an Applicant's representative and any Applicant's consultant(s) with technical information or expertise related to the dispute. The parties shall, in good faith, endeavor to resolve their disputes through the Conference.

11.1.2. Mediation. If this Conference process does not resolve the dispute within the 7 day Conference period, the Parties shall in good faith submit the matter to mediation. The Parties shall send the same types of representatives to mediation as specified for the "Conference" process. Additionally the Parties shall have representatives present at the mediation with full authority to make a settlement within the range of terms being discussed, should settlement be deemed prudent. The mediation shall take place within 45 days of the parties submitting the dispute to mediation.

In order to expedite the mediation, during the Conference process the Parties shall select the mediator. The mediator must be a neutral professional full time mediator with time available to meet with the parties within the 45 day mediation period following the 7 day Conference period.

To prepare for mediation, during the 7 day Conference period, the County will select three qualified mediators, as specified above, who are available in the following 45 days. At the end of the 7 day Conference period, if the matter has not been resolved, the Applicant shall, within the 24 hours of being given the three names select one of the three. The parties will in good faith attempt to resolve the dispute in the 45 day mediation period.

If the dispute is not able to be resolved through the mediation process in the 45 day

period, the parties may pursue their legal remedies in accordance with Washington and local law, including the revocation of the CUP under 17.60A.100 and this Agreement.

12. Indemnity.

The Project owners shall indemnify and hold harmless the County and its elected officials and employees from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever ("Claims") that are caused by or result from the negligent act or omission of Applicant's employees, officers, or agents in the operation of the Project; provided, however, that the total and cumulative obligation hereunder for all such Claims is limited to and shall not exceed five million dollars (\$5,000,000.00). In the event of concurrent negligence, Applicant shall indemnify and hold harmless the County only to the extent of Applicant's negligence, subject to the foregoing five-million-dollar limitation for any and all Claims.

13. Entire Agreement.

This Agreement, together with all Attachments hereto, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. Agreement is specifically intended by the Parties to supersede all prior agreements whether written or oral.

APPROVED this _____ day of _____, 2010.

BOARD OF COUNTY COMMISSIONERS
Kittitas County, Washington

Chairman, Alan A. Crankovich

Vice Chairman, Paul Jewell

Clerk of the Board, Julie Kjorsvik

Commissioner, Mark McClain

Approved by:

Kittitas County Prosecuting Attorney, Deputy
Neil Caulkins

TEANAWAY SOLAR RESERVE, LLC,
a Wyoming limited liability company

By: _____

Name: _____

Title: _____

ATTACHMENT A: PROJECT AREA LEGAL DESCRIPTION

**ATTACHMENT B: SEPA DETERMINATION: MITIGATED DETERMINATION OF
NONSIGNIFICANCE**

ATTACHMENT C: CONDITIONAL USE PERMIT [PLACEHOLDER]

ATTACHMENT D: FIRES SERVICES AGREEMENT

ATTACHMENT E: PROPOSED SITE LAYOUT