

**BOARD OF COUNTY COMMISSIONERS  
COUNTY OF KITTITAS  
STATE OF WASHINGTON**

**RESOLUTION NO: 2010- 08**

**A Resolution Approving Execution of the Second Amendment to a Memorandum of Agreement for Costs Associated with Review of the Teanaway Solar Reserve Project.**

- WHEREAS,** Teanaway Solar Reserve, LLC (TSR) has proposed developing 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; and
- WHEREAS,** On August 18, 2009, TSR submitted to the County's Community Services Department (CDS) an application for a Conditional Use Permit (CUP) and draft Development Agreement (DA) for the Project, requesting the County's expedited review of the CUP, DA and related documentation, including an expanded SEPA checklist; and
- WHEREAS,** On September 15, 2009, the County adopted Resolution 2009-121 approving execution of a Memorandum of Agreement with TSR for recovery of costs associated with the review of the Project; and
- WHEREAS,** On September 28, 2009, the Memorandum of Agreement between the County and TSR was executed for recovery of costs associated with the review of the Project, and Review Funds in the amount of \$34,109.00 were subsequently forwarded to the County; and
- WHEREAS,** The County subsequently established a Services Account for the Review Funds as authorized by Resolution 2009-121 and the Memorandum of Agreement; and
- WHEREAS,** On January 5, 2010, the County adopted Resolution 2010-02 approving execution of the First Amendment to the Memorandum of Agreement with TSR for recovery of costs associated with the review of the Project; and
- WHEREAS,** On January 27, 2010, the First Amendment to the Memorandum of Agreement between the County and TSR was executed for recovery of costs associated with the review of the Project, and Review Funds in the amount of \$25,875.00 were subsequently forwarded to the County by TSR and deposited by the County into the Services Account for review of the Project; and
- WHEREAS,** The review fees for County and GordonDerr work on the permit review for the Project through December 31, 2010 are estimated to exceed the additional funds provided with the First Amendment, and additional funds in the amount of \$25,875 are necessary for the continued expedited review of the Project; and

**WHEREAS,** The September 28, 2009, Memorandum of Agreement between the County and TSR included an initial term ending on January 1, 2010 and the First Amendment extended this term to July 1, 2010, and an extension to the term is necessary for the continued review of the Project; and

**WHEREAS,** This second amendment to the Memorandum of Agreement between the County and is necessary for additional review fees and extension of the agreement to December 31, 2010.

**NOW, THEREFORE BE IT RESOLVED,** that the Board of Kittitas County Commissioners does hereby resolve:

1. Upon adoption of this resolution, the County will execute a second amendment to the Memorandum of Agreement with TSR for reimbursement of costs associated with review of the proposed Project.

**ADOPTED** this 15<sup>th</sup> day of June, 2010.

**BOARD OF COUNTY COMMISSIONERS  
KITITAS COUNTY, WASHINGTON  
ABSENT**

\_\_\_\_\_  
Mark McClain, Chairman

\_\_\_\_\_  
Paul Jewell, Vice Chairman

\_\_\_\_\_  
Alan Crankovich, Commissioner

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Neil Caulkins, Deputy Prosecuting Attorney



ATTEST  
CLERK OF THE BOARD

\_\_\_\_\_  
Julie A. Kjorsvik



## **Second Amendment to Teanaway Solar Reserve Memorandum of Agreement on Fees and Costs**

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THIS SECOND AMENDMENT to the September 28, 2009 Memorandum of Agreement ("MOA"), incorporated herein and attached hereto as Exhibit A, is entered into by Teanaway Solar Reserve, LLC ("TSR"), a Wyoming limited liability company, and Kittitas County ("County"), a municipal corporation of the State of Washington, and shall be effective on the date on which it is executed by all Parties.

### **The Parties hereby agree to amend the MOA as follows:**

1. Capitalized terms used in this Second Amendment shall have the same meaning as defined in the MOA unless expressly defined differently in this Second Amendment.
2. Within three (3) days of the Parties' executing this Second Amendment, TSR will forward to the County a check in the amount of \$25,875 for the County's continuing permitting review, as described in Exhibit B hereto ("Additional Project Review Fees").
3. Upon receipt of the Additional Project Review Fees, the County shall promptly deposit the funds in the Services Account established for the Review Funds.
4. The term of the MOA shall be extended to December 31, 2010.
5. Other than as expressly amended in this Second Amendment, the MOA shall remain in full force and effect in accordance with its terms.



EXECUTED, this 4 day of Aug, 2010, for **Teanaway Solar Reserve, LLC:**

By:   
Howard Trott, Managing Member

Approved by Resolution in Open Session this 15th day of June 2010.

EXECUTED, this 15<sup>th</sup> day of June, 2010, for **Kittitas County:**

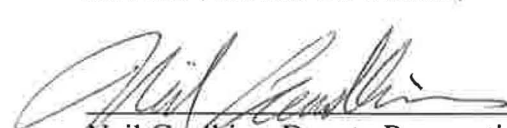
**BOARD OF COUNTY COMMISSIONERS  
KITITITAS COUNTY, WASHINGTON**

ABSENT  
Mark McClain, Chairman

  
Paul Jewell, Vice Chairman

  
Alan Crankovich, Commissioner

APPROVED AS TO FORM:

  
Neil Caulkins, Deputy Prosecuting Attorney



CLERK OF THE BOARD

  
Julie A. Kjorsvik

ABSENT



# Exhibit A

## Teanaway Solar Reserve Memorandum of Agreement on Fees and Costs



THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into by Teanaway Solar Reserve, LLC ("TSR"), a Wyoming limited liability company, and Kittitas County ("County"), a municipal corporation of the State of Washington, (collectively, the "Parties").

### RECITALS

#### WHEREAS:

- A. TSR has proposed developing 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; and
- B. TSR's stated 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; and
- D. On August 18, 2009, TSR submitted to the County's Community Services Department ("CDS") an application for a Conditional Use Permit (CUP) and draft Development Agreement (DA) for the Project, requesting the County's expedited review of the CUP, DA and related documentation, including an expanded SEPA checklist; and
- E. On June 2, 2009, the County entered into a Professional Services Agreement with the firm of GordonDerr LLP ("GordonDerr") for planning-related oversight of development permit review in Kittitas County; and
- F. The County initially estimated the Project's permit review fees and costs for County staff and GordonDerr to be \$28,359.00, including those nondiscretionary fees and costs set by County ordinance, and subsequently revised the estimated fees to include an additional \$5,000.00 for the County's legal review for a total of \$34,109.00, as described in Exhibit A hereto ("Project Review Fees"); and
- G. TSR included with the CUP and DA a check for \$28,359.00, and is in the process of forwarding the additional funds (\$5,750.00), (collectively, the "Review Funds"); and
- H. There is currently no Services Account established for depositing the portion of the Review Funds not otherwise set by County ordinance and initiating the County's permitting review for the Project; and
- I. Therefore, this Agreement sets forth the following terms and conditions to govern the use of the Review Funds and authorize the County's permitting review prior to the establishment of such Services Account.



**In consideration of the foregoing, the Parties hereby agree as follows:**

1. In conjunction with County staff, GordonDerr will work on the permit review for the Project in accordance with the existing consultant agreement with the County. The County shall not reassign or subcontract the Project's permitting review to another consultant without the consent of all Parties.
2. A new County municipal account entitled "Teaaway Solar Reserve Services Account" (hereinafter "Services Account") shall be established by the County in order to implement the terms and provisions of this Agreement.
3. Once the Services Account is established, the County shall deposit the applicable Review Funds for application to any Project Review Fees incurred. The Services Account shall be administered by the County in a manner that is fiscally accountable to the Washington State Auditor, the County, and TSR.
4. TSR provided a Letter of Agreement, dated September 3, 2009, to Mr. Kirk Holmes, attached hereto as Exhibit B, asking the County to hold the Review Funds in abeyance until the Services Account is established and further assure the County of TSR's commitment to fully fund the County's permitting review for the Project.
5. Pursuant to the Letter Agreement and this Agreement, the County shall hold the Review Funds until the Services Account is established, and TSR shall not withdraw the Review Funds in any manner prior to the County's deposit of said funds into the Services Account.
6. In reliance on the Letter Agreement and this MOA, the County may continue its permitting review process for the Project on an expedited basis.
7. The Services Account shall be initially funded by the Review Funds, minus any funds already allocated to Project Review Fees set by County ordinance. The County shall be solely responsible for any and all payments from the Services Account for GordonDerr's services and costs incurred for the Project's permitting review. Upon completion or termination of the County's agreement with GordonDerr, and after final payment to GordonDerr, any remaining balance in the Services Account shall be refunded to TSR.
8. TSR shall indemnify and hold the County harmless from any claim for payment due by GordonDerr in excess of the remaining balance in the Services Account, provided that this claim relates to the Project Review Fees set forth in Exhibit A or as modified with the agreement of TSR, and GordonDerr's work was completed prior to termination of the County's agreement with GordonDerr.
9. Nothing in this Agreement shall constitute or be interpreted as a maximum cap on TSR's obligations for the County's expenditures on consultant services, nor shall it constitute or be interpreted as a cap on any amounts that may be drawn from the Services Account during any monthly period. Notwithstanding the foregoing, the maximum total amount that TSR is obligated to pay under this Agreement shall not exceed the Project Review Fees set forth in Exhibit A. Nothing in this Agreement shall obligate the County to



continue to proceed with the review process for the Project at any time the County determines sufficient funds are not in the Services Account.

10. This Agreement shall have an initial term (July 1, 2009- January 1, 2010) and may be extended by agreement of the Parties; said renewal(s) to be in writing and executed not less than 30 days prior to the expiration of the previous term. Should either Party desire to terminate this Agreement, the terminating Party shall provide the other Party with thirty (30) days prior written notice, provided that such termination shall not relieve a Party of any outstanding obligation under the terms of this Agreement. This Agreement can be amended only by written agreement of the Parties.

EXECUTED, this 9 day of 28, 2009, for Teanaway Solar Reserve, LLC:

By: [Signature]  
Howard Trott, Managing Member

Approved by Resolution in Open Session this \_\_\_\_ day of September 2009.

EXECUTED, this 15<sup>th</sup> day of September, 2009, for **Kittitas County**:

**BOARD OF COUNTY COMMISSIONERS  
KITITAS COUNTY, WASHINGTON**

[Signature]  
Alan Crankovich, Chairman

[Signature]  
Paul Jewell, Vice Chairman

[Signature]  
Mark McClain, Commissioner



[Signature]  
Julie A. Kjorsvik

APPROVED AS TO FORM:

[Signature]  
Neil Caulkins, Deputy Prosecuting Attorney



**Exhibit B**  
**Additional Project Review Fees**  
**Teanaway Solar Reserve**



**Conditional Use Permit (CUP) and Development Agreement**

**Note:** The fee estimate provided below is to cover the CUP review, which is listed in the County fee ordinance, and the Development Agreement for large/complex projects<sup>1</sup>, which is not listed in the County fee ordinance. The fee estimate includes costs associated with the County retaining a contract planner to assist in the review of the proposal.

Review Service	Estimated Hours	Fee Estimate (Resolution 2009-121)	Estimated Hours	1st Amendment Fee Estimate (Resolution 2010-02)	Estimated Hours	2st Amendment Fee Estimate (through Dec 31, 2010)
Community Development Services						
• Counter Intake & Website		\$N/A		NA		NA
• Land Use Planning & SEPA Review		CUP base fee \$1,560 SEPA base fee \$470		NA		NA
• Contract Planner	85 to 110	\$15,000 to \$20,000	85 to 110	\$15,000 to \$20,000	85 to 110	\$15,000 to \$20,000
• Fire Marshal Review	2	\$130		NA		NA
• Building Review		\$N/A		NA		NA
Public Works Review	20	\$2,500		\$2,500		\$2,500
Environmental Health		\$N/A		NA		NA
Legal		\$5,000		NA		NA
<b>SUBTOTAL</b>		\$29,660		\$22,500		\$22,500
<b>15% Administrative Fee</b>		\$4,449		\$3,375		\$3,375
<b>Estimated Total</b>		<b>\$34,109</b>		<b>\$25,875</b>		<b>\$25,875</b>
<b>Combined Fee Estimate</b>						<b>\$85,859</b>

<sup>1</sup> Large/complex projects include multiple substantive issues to be resolved involving multiple County staff and, as necessary, third-party consultant reviews. Requires review of critical areas and/or other special or technical studies, legal research, and response to a high volume of public comments and inquiries or appeals.

