

**PROPOSED DRAFT**

*[Note to reader: The Applicant, Teanaway Solar Reserve, LLC (TSR), submitted this draft Development Agreement to Kittitas County on August 18, 2009. The revisions in this document were prepared by Kittitas County as part of the initial review of this agreement. The revisions are purposely limited at this time as a full substantive review of this document can not occur until the applicant submits additional information as described in Kittitas County's December 4, 2009 letter requesting additional information. As part of the applicant's resubmittal, the applicant may propose additional revisions to this agreement. Furthermore, additional revisions will be prepared after a SEPA threshold determination is issued, and a decision is made on the associated Conditional Use Permit (CUP) application (File No. CU-09-00005.]*

**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 \_\_\_\_\_, 2009 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 Operations and Maintenance (O&M) building. A full description of the Project is contained in Attachment A: Project Description.

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 B: Project Area Legal Description. A map showing the location of the Project Area is contained in Attachment A: Project Description.

E. The construction of the Project is currently scheduled for three consecutive seven to nine month construction seasons (generally between April 1 to October 31 as weather allows) between the years 2010 through 2012. As fully constructed, the Project is anticipated to require approximately 580 acres ("Project Site") within the overall Project Area. A map showing the location and layout of the Project is contained in Attachment A: Project Description.

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 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), ~~attached hereto as Attachment C.~~ One of the 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 \_\_\_\_\_. Applicant agrees to abide by the CUP, the ~~Proposed~~ 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 ~~November~~ \_\_\_\_, 201009, the Board of Adjustment ("~~BOA~~") voted to to approve the CUP.

J. As required by KCC Title 15A and accompanying Table, 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. ~~as required by KCC Title 15A and accompanying Table, and RCW 36.70B.200.~~

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 9 of this Agreement, or by the County upon revocation, withdrawal or termination of the underlying CUP.

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 8 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. *[Note: Additional revisions to this section will be prepared following issuance of the SEPA threshold determination and the CUP decision.]***

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 10 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. County. "County" means Kittitas County, Washington.

2.6. Construction Buildout Period. "Construction Build out Period" has the meaning set forth in Section 5.10 of this Agreement.

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

2.8. Development Standards. "Development Standards" means [all the requirements of the Kittitas County Code, except as otherwise](#) ~~the requirements~~ stated in Section 5 of this Agreement.

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

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

2.11. Force Majeure Event. "Force Majeure Event" means any event that [is out of the Applicant's control and that](#) directly prevents or delays the performance by the Party affected 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 authority other than EFSEC.

2.12. 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.

2.13 MDNS. "MDNS" means the Mitigated Determination of Non-significance" issued as a SEPA determination by Kittitas County for the Project on \_\_\_\_\_.

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

2.15. 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 Operations and Maintenance (O&M) building. The Project and its components are more fully described in Attachment A: Project Description.

2.16 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 A: Project Description. The land within the Project Area is as more specifically described in Attachment B: Project Area Legal Description.

2.17 Project Site. "Project Site" means the land area on which the Project will actually be sited. The Project Site covers approximately 580 acres. A map showing the approximate location of the Project Site is contained in Attachment A: Project Description.

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

2.19. Substantial Completion. "Substantial Completion" means the Project is

constructed, installed, generating and delivering energy to the electric power grid.

2.20. Transferee. A party to which the Project is transferred or assigned in part or in whole under the provisions contained in Section 10.1 of this Agreement.

### 3. Protect Description

The Project is a proposed solar farm, along with other necessary components and related appurtenant improvements as described in Attachment A: Project Description, capable of generating up to 75 megawatts (MWdc) of photovoltaic (PV), 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.

### 5. Development Standards. *[Note: Additional revisions to this section will be prepared following issuance of the SEPA threshold determination and the CUP decision.]*

5.1. Location and Description of Project. The Project is as described in Attachment A: Project Description, and illustrated in Attachment A: Project Description, modified as necessary in accordance with this Agreement's Development Standards, CUP, and SEPA mitigation measures, see Attachments C and D. Figure 4 in Attachment A: Project Vicinity Map with Landowners and Residential Locations illustrates the location of the Project and its components in relation to existing structures in the vicinity of the Project.

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 taller than 175 feet will not be used without Applicant first obtaining an approved variance from the County.

5.3. Fire and Police 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 A: Project Description. The Project Area is currently



subject to the fire suppression services of the Washington Department of Natural Services. Should the construction of the Project require additional or different fire protections services, the Applicant will work with Kittitas County Fire Protection District #7 to ensure that suitable fire suppression services are in place during the construction and on-going operations of the Project. Police protection of the Site Area is provided by the County's Sherriff's Office. The construction contractor will notify the fire protection and police services of staging and active construction locations so these services can respond efficiently to emergencies, should any arise. During the operational phase, the Applicant will contact fire protection and police services in the event of an emergency.

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

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. The main Project access road entrance is from a private roadway generally known as Loping Lane extending from the Weihl Road, also a private road, through portions of sections 26 and 27, T. 20, 16 E, W.M., Kittitas County, to the Project Area as generally depicted in Attachment A: Project Description. The Applicant's road use shall be subject to any road use agreements in effect pertaining to Applicant's use of that roadway, including, without limitation, the Horseshoe Hills Ranch Declaration of Protective Covenants, Conditions and Easements (Kittitas County Auditor's Recoding No. 488155, dated June 5, 1985), Easement and Road Maintenance Agreement (Kittitas County Auditor's Recoding No. 200204020024 dated February 5, 2002), Declaration of Protective Covenants (Kittitas County Auditor's Recoding No. 200306060049 dated June 6, 2003), and Addendum To Protective Covenants (Kittitas County Auditor's Recoding No. 200308290105 dated August 28, 2003). The Applicant will additionally work with neighbors who use Loping Lane to identify measures that will minimize disruption to their use during construction and to the roadway itself.

The project will be served internally by a network of existing and/or new maintenance roads. The existing maintenance roads, along with Weihl Road and Loping Lane, generally consist of gravel and dirt and may need improvements in accordance with County requirements. The Applicant is responsible for any improvements to these roads, and will first submit a plan detailing any such improvement for review and approval by the Kittitas County Public Works

Department, which shall not unreasonably be withheld.

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 BOJ, 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. Concrete batch plants. Concrete batch plants on the site, if any, shall be strictly for on-site use and shall be removed from the site when construction is complete.

5.9. 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 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 Wehl Road. The Applicant does not have the authority to grant permission to 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.

5.10 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, 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 Reclamation.**

The Applicant is under a contractual obligation with the landowner to return the site in

pre-construction condition minus reasonable wear and tear and, at the landowner's request, to remove any or all of the Project's components. Applicant is also contractually bound to reclaim the site to address any damage caused by the demolition and removal of any alterations or improvements to the Project Site, including the Project. *[Note to applicant: The contractual obligation for decommission and reclamation must be between the County and TSR, with the landowner acknowledgment of this obligation. Revise and expand this section to include the following: Decommissioning Plan; Decommission Scope and Timing; and Decommissioning Funding and Surety]*

**7. Consistency with Local Regulations.** *[Note: Revisions to this section will be prepared following the CUP decision.]*

The County hereby acknowledges that if the Project is developed consistent with this Agreement and any Amendments thereto, the public health, safety, and welfare will be adequately protected within the bounds of the law; the Project will be considered essential and desirable to the public convenience; the Project will not be detrimental or injurious to the public health, peace, or safety, or to the character of the surrounding neighborhood; the Project will not be unreasonably detrimental to the economic welfare of the County; and the Project will not create excessive public cost for public facilities and services. Assuming the Applicant's objectives are met, the Project helps fills significant local needs in supplying electricity, creating local jobs and promoting economic development in rural areas, while also having the positive benefits of avoiding the external environmental costs associated with traditional electrical generation technologies.

The Project is located on property that is zoned as Forest & Range -20. Due to Project and equipment design and materials, the Project's O&M, the remoteness of the Project, and the surrounding vegetation, the Project poses no significant risks to residents from reflective glare, noise impacts, fire, or other disturbances from the construction, installation or use of the Project. The Project will deliver cost effective renewable energy to the electric grid and, as such, is essential and desirable to the public convenience. The Project will contribute significant tax revenues to the County which will far exceed the limited public service costs the Project will introduce.

**8. 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 the Agreement [and CUP](#).

8.1 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.

8.2 Project and Project Area Expansion. 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 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 \(SEPA Regulations\).](#)

*[\[Note to applicant: To clarify the scope of any expansions and the role of the staff, BOA and BOCC in such expansions, the County anticipates revising Section 8.2 to include the Amendment Provisions conceptually outlined in Attachment E.\]](#)*

## **9. 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.

## **10. General Provisions.**

10.1 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:

10.1.1 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 10.1.2 and 10.1.3 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:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) Upon any transfer made in accordance with this Section 10.1.1 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.

#### 10.1.2 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.

#### ~~10.1.3 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, such as Puget Sound Energy, 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.~~

10.2 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.

10.3 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.

10.4 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.

10.5 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.

10.6 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.

10.7 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.

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

10.9 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 be approved by the County prior to construction, and such approval shall not be unreasonably withheld.

**11. Notices**

11.1 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.

11.2 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:                   Teaway 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

11.3 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.

## **12. 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.

### **12.1 Dispute Resolution Process.**

12.1.1. 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.

12.1.2. 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 law.

**13. 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.

**14. Entire Agreement.**

This Agreement, together with all Attachments hereto, constitutes the entire agree 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 \_\_\_\_\_, 200\_\_.

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: \_\_\_\_\_