

# Sample Development Agreement

A DEVELOPMENT AGREEMENT

BY AND BETWEEN

NYE COUNTY,

AND

(Developer)

(Date)

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This Development Agreement (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the County of Nye, State of Nevada (hereinafter "County") and (Developer Name) (hereinafter "Developer"), as the Developer of the (Project Name) (the "(Project Acronym)").

## RECITAL OF PREMISES, PURPOSE AND INTENT

A. Developer or its affiliate controls or has a right of way application with the BLM to develop and operate the (Project) on that certain real property described and shown on Exhibit "A" attached hereto and incorporated herein by reference (hereinafter the "Property") containing approximately (Size of Land) of land, which is the subject of this Agreement. Developer desires to construct a renewable energy project on the Property.

B. The County has authority, pursuant to NRS Chapter 278.0201 to 278.0207 and Nye County Nye County Code, Chapter 16.32, to enter into development agreements with persons having a legal or equitable interest in real property to establish long-range plans for the development of such property.

C. All preliminary processing with regard to this Agreement has been duly completed in conformance with all applicable laws, rules and regulations. The Nye County Board of County Commissioners (hereinafter "BoCC"), having given notice as required by law, held a public hearing on Developer's application seeking approval of the form of this Agreement and the execution hereof by the BoCC. At that hearing, the BoCC found that this Agreement is consistent with the County's plans, policies and regulations, including the (City/Town) Area Plan and the Master Plan, and that the execution of this Agreement on behalf of the County is in the public interest and is lawful in all respects.

D. On the \_\_\_ day of \_\_\_\_\_, 20\_\_ the BoCC adopted Ordinance No. \_\_\_\_\_ approving this Agreement and authorizing the execution hereof by duly constituted officers of the County. Said ordinance took effect on the \_\_\_ day of \_\_\_\_\_, 20\_\_. The County agrees to record a certified copy of the ordinance as required by NRS Chapter 278.

E. The County desires to enter into this Agreement in conformance with the requirements of NRS Chapter 278, and as otherwise permitted by County Code, law and this Agreement, to ensure the land use impacts on public services in connection with the Proposed Development are mitigated, as limited to and further defined within specific exhibits attached hereafter, to further the goals

and values of the (City/Town) Area Plan and the Master Plan, to promote the health, safety and general welfare of the County and its inhabitants, to minimize uncertainty in planning for and securing orderly development of the Property and surrounding areas, to insure attainment of the maximum efficient utilization of resources within the County in a way that provides the highest economic benefit and least fiscal cost to its citizens, and to otherwise achieve the goals and purposes for which the laws governing development agreements were enacted. The conditions stated in this Agreement will reasonably mitigate the land use impacts that the development of the Property will have on the citizens of Nye County. The County and Developer acknowledge that the conditions of this Agreement were not an inducement for any other land use decision relating to the Property or other action by the County.

The County finds and determines, and the Developer agrees, that the conditions established in this agreement are unique to the Proposed Development and were negotiated at arms length between the County and the Developer, and that the conditions of this Agreement have no binding or precedential effect with regard to future development agreements in the County, and cannot be relied upon by the parties to this Agreement, or future applicants for rezoning, subdivision plat, or other land use approvals in other development agreements.

This Agreement is consistent with and will implement the goals and objectives of the County Code generally, Title 16 Chapter 32 specifically, the (City/Town) Area Plan and the Master Plan.

NOW THEREFORE, for and in consideration of the foregoing recitals and of the mutual covenants and promises set forth herein, the parties do hereby agree as follows:

## **SECTION 1. DEFINITIONS.**

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

“Affiliate” means an entity, partnership or corporation which Developer controls, or in which Developer has a controlling interest or which controls Developer.

“Agreement” has the meaning assigned to it in the first paragraph hereof, and at any given time includes all addenda and exhibits incorporated by reference and all amendments which hereafter are duly entered into in accordance with the terms of this Agreement.

"Applicable Rules" means and refers to:

1. The following provisions of the Nye County Code, as it existed on the Effective Date:
  - a) Nye County Code, Title 15, Chapters 15.12 (Flood Damage Prevention), 15.16 (Uniform Construction Codes) and 15.20 (Board of Building and Safety Appeals) as may be amended at any time during the term of this Agreement by building codes that apply uniformly throughout the County; and
  - b) Title 16; and
2. This Agreement.

The term "Applicable Rules" does not include:

1. Any ordinances, laws, policies, regulations or procedures adopted by a governmental entity other than the County;
2. Any fee or monetary payment prescribed by County ordinance which is uniformly applied to development and construction similar to the Proposed Development and subject to the County's jurisdiction, including any increase of fees or monetary payments that are cost-based and uniformly applied to all development and construction within the County or a designated service area. This Definition does not preclude the County obtaining full cost recovery for any cost-based services or infrastructure that are based on variables such as inflation, construction and consumer price indexing to the extent permitted by Nevada or federal law; or
3. Any applicable state or federal law or regulation.

"BLM" means the Bureau of Land Management.

"BoCC" means the Board of County Commissioners.

"Code" means the Nye County Code, as amended by Nye County Ordinances and Resolutions adopted by the BoCC, and including all rules, regulations, standards, criteria, manuals and other references adopted therein.

"County" means the County of Nye, State of Nevada, together with its successors and assigns.

"Developer" means (Renewable Energy Developer) as the Developer of the land constituting the Property and its successors and assigns, if any, as permitted under the terms of Section 3.8 of this Agreement.

"Discretionary Approval" means an approval that involves the exercise of significant and extensive factual or legal judgment by the County.

"Effective Date" means the effective date of an ordinance adopted by the BoCC that approves the execution of this Agreement.

"Engineering Standards" means those uniform standards adopted by the County for the design of roads, drainage, and other infrastructure, as may be amended from time to time. The Engineering Standards are currently set forth in the "Guidelines for Design and Review of Development Engineering Submissions," pursuant to Nye County Resolution 2005-02.

"Land Use Application" means any application seeking any approval authorized or required by the Applicable Rules.

"Land Use Plan" means the drawings and specifications attached in Exhibit B.

"Landscape and Buffer Plan" means the drawings and specifications attached in Exhibit C.

"Master Plan" means the 1994 Nye County Comprehensive Plan dated May 3, 1994.

"Master Traffic Impact Analysis" means a comprehensive traffic study prepared in conformance with this Agreement, as amended or conditioned and finally approved by the County.

"NRS" means the Nevada Revised Statutes.

"Planning Department" means the Planning and Development Department of the County.

"Planning Director" means the Director of the County's Planning Department, or his or her designee(s).

"Property" means that certain real property as shown on Exhibit "A".

"Proposed Development" means all development within the boundaries depicted in Exhibit A, as further described in Exhibits B-E.

"Public Works Director" or "Director of Public Works" means the Director of the County's Department of Public Works or their designee(s).

"Technical Drainage Study" means a study prepared in conformance with this agreement, as amended or conditioned and approved by the County.

"Town Advisory Board" means the (City/Town) Advisory Board.

"Uniform" means applicable throughout the County.

## **SECTION 2. GENERAL PURPOSE AND INTENT.**

This Agreement is predicated upon the following facts and findings:

### ***2.1 County Intent.***

The County desires to enter into this Agreement in conformity with the requirements of NRS 278.0201 and as otherwise permitted by law and this Agreement to provide for public services, public uses and impact mitigation, to promote the health, safety and general welfare of the County and its inhabitants, to minimize uncertainty in planning for and securing orderly development of the Proposed Development and surrounding areas, to insure attainment of the maximum efficient utilization of resources within the County in a way that provides the highest economic benefit and least fiscal cost to its citizens, to reasonably mitigate the impacts that the development of the Property will have on the citizens and lands of Nye County, and otherwise achieve the goals and purposes for which the laws authorizing development agreements were enacted.

### ***2.2 Developer Intent.***

In accordance with the legislative intent evidenced by NRS Chapter 278, Developer wishes to obtain reasonable assurances that Developer may develop the Proposed Development in accordance with the conditions established in this Agreement. Developer acknowledges that there may be certain insufficient public services, which includes facilities and infrastructure, existing or planned at this time, and in order to develop the Proposed Development, Developer is willing to enter into this Agreement in order to provide certain public services, facilities and infrastructure in the area of the Proposed Development. The Developer's decision to commence development of the Proposed Development is based on expectations of proceeding and the right to proceed with the Proposed Development in accordance with this Agreement and the Applicable Rules. Developer further acknowledges that this Agreement was made a part of the record at the time of its approval by the BoCC and that the Developer

agrees without protest to the requirements, limitations, or conditions imposed by this Agreement.

### ***2.3 Incorporation of Recitals.***

The foregoing recitals shall be deemed true and correct in all respects with respect to this Agreement and shall serve as the basis for the interpretation of this Agreement.

## **SECTION 3. GENERAL PROVISIONS.**

### ***3.1 Binding Agreement.***

This Agreement shall be binding on and inure to the benefit of the parties hereto and their successors and assigns, including any future and subsequent purchasers.

### ***3.2 Reliance on the Applicable Rules.***

The County and Developer agree that Developer will be permitted to complete the entire Proposed Development in accordance with this Agreement and the Applicable Rules.

### ***3.3 Modification of Applicable Rules.***

County and Developer acknowledge and agree that this Agreement is specific to the Proposed Development and may not be amended, modified or changed with respect to the Proposed Development without the express written consent of Developer and County, except as otherwise explicitly provided in this Agreement and by state statute. In the event the County adopts new ordinances, rules or regulations, such new ordinances, rules or regulations will not apply to the Proposed Development for the duration of this Agreement except as provided herein.

### ***3.4 Application of Subsequently Enacted Rules.***

Except as expressly provided by this Agreement, County hereby agrees that no standard, policy, resolution or regulation regarding infrastructure improvements, subdivision, land use, zoning, growth management, timing and phasing of construction, or construction methods shall be imposed by the County upon the Proposed Development, except those in effect at the time of this Agreement. County may hereafter, during the term of this Agreement, apply to the Proposed Development only those rules, regulations, ordinances, laws, general or specific plans, and official policies promulgated or enacted after the Effective Date that:

- (a) are not in conflict with the Applicable Rules, or
- (b) that are permitted by subsection 3.5, below.

### ***3.5 Imposition of New Fees or Standards.***

Notwithstanding the terms of Section 3.3 and 3.4, above:

- (a) The Proposed Development is subject to all of the following regulations, fees, or other requirements in effect now or in the future:
  - (1) uniform cost-based fees subject to any credits or offsets required by the fee ordinances or Nevada law; and
  - (2) except as provided herein, all regulations governing construction standards and specifications including, without limitation, the County's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in the County; and
  - (3) uniform processing fees and charges of every kind and nature imposed by the County to cover the estimated actual costs to the County of processing applications for Permits or for monitoring compliance with any Permits granted or issued; and
  - (4) uniform estimated costs for completing required public improvements that are used to calculate costs for maintenance or warranty guarantees, bonds, or other guarantees or assurances to complete the public improvements that are required for the Proposed Development; and
  - (5) except as provided herein, uniform procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are uniformly applied throughout the County to all substantially similar types of development projects and properties; and
  - (6) the Engineering Standards; and
  - (7) uniform laws and regulations that are reasonably necessary to protect the public health, safety or welfare; and
  - (8) new or changed County ordinances, regulations, plans or

policies specifically mandated and required by changes in state or federal laws or regulations. In such event, the provisions of Section 3.6 and 3.7 of this Agreement are applicable.

- (b) Notwithstanding the foregoing, should the County adopt or amend new standards, ordinances, rules, regulations or policies that exceed the limitations of Section 3.5(a), County shall provide written notice to Developer within thirty (30) days of adoption or amendment of the same to allow Developer sufficient time to conduct due diligence. If the County provides the above stated notice, Developer may reject such new or amended matters by giving written notice to County. If Developer fails to give such written notice within forty-five (45) days of receipt of notice by the County, such ordinances, rules, regulations or policies are deemed accepted by the Developer. County and Developer shall execute a supplement to this Agreement evidencing Developer's acceptance of any new or amended ordinance, rule, regulation or policy.

### ***3.6 Conflicting Federal or State Rules.***

In the event that any conflicting federal or state laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the County, this Agreement shall remain in full force and effect as to those provisions not affected.

### ***3.7 Cooperation in Performance.***

The parties hereto agree to cooperate with each other in good faith and to take such additional actions, including the execution and delivery of documents and instruments, as may be necessary or appropriate, to fully effectuate and carry out the terms, provisions, purposes and intent of this Agreement. Without limiting the foregoing, County agrees that it will not object to any applicable federal and state approvals required for the Proposed Development without first notifying Developer of its objection. The Developer shall not have a right to obtain any Discretionary Approval from the County, however it shall not be unreasonably withheld from the Developer.

### ***3.8 Assignment.***

The Developer shall not sell, transfer, ground lease or assign the Property or this Agreement in whole or in part to any person (other than an Affiliate of the Developer or in accordance with Section 3.8(f)), partnership, joint venture, firm, company or corporation (any of the foregoing, an "Assignee") without the written consent of the County, which shall not be unreasonably withheld.

- (a) The Assignee shall assume in writing all obligations of Developer hereunder, and provide substitute security in a form and an amount acceptable to the County for any security previously provided by Developer in compliance with the Applicable Rules, if any.
- (b) The Assignee shall assume all duties and obligations of Developer.
- (c) Documentation of the financial stability of any Assignee shall be provided to County prior to the assignment. The County, using reasonable financial criteria, will approve, approve with conditions, or disapprove such transfer in order to ensure that the Assignee has the same ability to fulfill the obligations of this Agreement as the Developer.
- (d) Except as expressly provided herein, no assignment or transfer of any portion of the Proposed Development shall relieve Developer of its obligations hereunder, and such assignment or transfer shall be subject to all of the terms and conditions of this Agreement. The County may, in its reasonable discretion, release the Developer of one or more of such obligations in a writing agreed to and executed by the County.
- (e) This subsection shall have no effect upon the validity of obligations recorded as covenants, conditions, restrictions or liens against parcels of real property.
- (f) Subject to subsections (a) through (e) above, Developer has full discretion and authority to transfer, assign or encumber the Proposed Development or portions thereof to financing parties, in connection with financing transactions that are related to the Proposed Development, without the permission of or notice to County. All such financing transactions shall be subject to the terms and conditions of this Agreement.

### ***3.9 Amendment of Agreement.***

Except as otherwise permitted by NRS Chapter 278 and this Agreement, this Agreement may be amended from time to time upon the mutual written consent of the parties hereto. All proposed amendments shall be considered solely by the BoCC for adoption or rejection, provided however that the BoCC reserves the right to require the Developer to consult with the Town Advisory Board if a proposed amendment would, in the County's opinion, affect that entity.

### ***3.10 Indemnity; Hold Harmless.***

Except as expressly provided in this Agreement, Developer shall hold County, its officers, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death and claims for property damage which may arise from the direct operations of Developer or those of its employees, which relate to the development of the Proposed Development. Developer agrees to and shall defend County and its officers, employees, and representatives from actions for damages caused by reason of Developer's activities in connection with the development of the Proposed Development, provided that County gives prompt notice to Developer of such actions and claims and cooperates with Developer in the resolution of such actions and claims, including any settlement thereof. Developer agrees to provide and pay all costs, attorneys fees, and damages related to a defense for County in any legal action filed in a court of competent jurisdiction by a third party alleging any such claims or challenging the validity of this Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of County, its officers, agents, employees, or representatives.

### ***3.11 Binding Effect of Agreement.***

The burdens of this Agreement bind, and the benefits of this Agreement inure to, the parties' respective successors in interest and the Property which is the subject of this Agreement.

### ***3.12 Relationship of Parties.***

It is understood that the contractual relationship between County and Developer is such that Developer is not an agent of County for any purpose and County is not an agent of Developer for any purpose.

### ***3.13 Entire Agreement.***

This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all of any part of the subject matter hereof.

### ***3.14 Waivers.***

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers of County and/or Developer, as the case may be.

### ***3.15 Recording; Amendments.***

Promptly after execution hereof, an executed original of this Agreement shall be recorded in the Official Records of Nye County, Nevada. Except as otherwise provided by NRS Chapter 278, all amendments hereto must be in writing signed by the appropriate officers of County and Developer in a form suitable for recordation in the Official Records of Nye County, Nevada. Upon completion of the performance of this Agreement, or its earlier revocation or termination, a statement evidencing said completion, revocation or termination shall be signed by the appropriate officers of the County and Developer and shall be recorded in the Official Records of Nye County, Nevada.

The Clerk of the Nye County Commission must record any agreement with a federal, state or local agency that is executed in full or partial fulfillment of any requirement of this Agreement, within a reasonable time after approval of the agreement, with the County Recorder. The Developer shall provide a true, signed original agreement to the Clerk of the Nye County Commission for this purpose.

### ***3.16 Headings; Exhibits; Cross References.***

The recitals, headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All exhibits attached to this Agreement are incorporated herein by the references contained herein. Any term used in an exhibit hereto shall have the same meaning as in this Agreement unless otherwise defined in such exhibit. All references in this Agreement to sections and exhibits shall be to sections and exhibits to this Agreement, unless otherwise specified.

## **SECTION 4. PLANNING, DEVELOPMENT AND MAINTENANCE OF THE PROPOSED DEVELOPMENT.**

### ***4.1 Permitted Uses, Height and Size of Structures.***

Pursuant to NRS Chapter 278, this Agreement must set forth the maximum height and size of structures to be constructed in the Proposed Development, the density of uses and the permitted uses of the land.

- (a) The permitted structures and uses of the Property shall be those either depicted in Exhibit B or described in Exhibit D.
- (b) Subject to modifications mutually agreeable to County and Developer, the Proposed Development shall comply with the Land Use Plan attached in Exhibit B hereto. Notwithstanding the above, where feasible, all administrative and service buildings constructed on the site shall utilize

colors to emulate the natural colors found in the surrounding area (a color palette of browns, tans, etc.).

- (c) The parties agree that the Proposed Development will contain design elements to mitigate the visual impact of the project. Accordingly, subject to modifications mutually agreeable to County and Developer, the Proposed Development shall conform to the Landscape and Buffer Plan attached as Exhibit C.
- (d) To the extent feasible, exterior lighting shall be directed downward and designed to minimize its impact on the dark-sky visual environment. Prior to commencement of construction, Developer shall provide the Planning Director a lighting plan for review.
- (e) The Proposed Development must comply with any other requirements, limitations, or conditions imposed by this Agreement.

#### ***4.2 Effect of Amendments.***

County acknowledges that Developer is anticipating that the entire Property will be developed in accordance with this Agreement and with any future amendments thereto, provided however, that the Proposed Development shall be developed in accordance with the Applicable Rules as set forth herein.

#### ***4.3 Modifications to the Proposed Development.***

- (a) A nonmaterial modification is a modification made by the Developer that:
  - (1) meets or exceeds the requirements of this Agreement;
  - (2) does not increase the amount of land area covered by this Agreement; and
  - (3) does not involve a substantial change to the Land Use Plan or the Landscape and Buffer Plan; and
  - (4) involves the rearrangement of uses or structures depicted in the Land Use Plan if such change is within the scope of the applicable state and federal approvals of the Proposed Development.
- (b) Nonmaterial modifications shall be provided to the Planning Director for his or her information.

- (c) A material modification includes any modification that does not qualify as a nonmaterial modification. Material modifications shall be reviewed and acted upon by the Planning Director within thirty (30) days. If Developer is aggrieved by the Director's decision, Developer may appeal that decision in accordance with §16.36.080.E of the Code.

#### ***4.4 Additional Property.***

Developer may not include property outside the boundaries of the Proposed Development within the terms of this Agreement without the prior approval of the BoCC. If Developer requests additional property to be included, the BoCC must reconsider additional impacts of the proposed additional development and must ensure that all impacts are appropriately mitigated through Developer contributions, impact fees, and any other allowable revenue source. Furthermore, the BoCC reserves the right to adjust the terms of this Agreement as a condition for allowing the addition of property.

#### ***4.5 Processing of Applications.***

- (a) The County acknowledges the Developer's desire to have timely reviews of studies, maps, plans, applications for permits, Land Use Applications and other authorizations for development of and within the Proposed Development submitted by Developer (collectively, the "Applications"). The County Schedule (defined below) does not apply to the public hearing portion of any Application for which a public hearing is required under the Applicable Rules.
- (b) The County deems the schedule ("County Schedule") set forth in the table below to be a reasonable estimate of time for the County to process Applications. Developer acknowledges that County's ability to process reviews in accordance with the County Schedule is based on Developer's quality of submission and timely and accurately addressing the written comments provided by the County with respect to such Applications. Should County reject any submission due to its lack of clarity and completeness, the submission will be returned to the Developer within the timeframes set forth in the County Schedule and the review time shall be restarted upon resubmission of complete submittals. The County Schedule is expressed in Business Days ("bd") from the date of a complete submittal. Failure of County to complete its review within the timeframes in the County Schedule shall not require the County to approve any of the Applications.

Category	1 <sup>st</sup> Review	2 <sup>nd</sup> Review	3 <sup>rd</sup> and Subsequent Reviews*	Mylar/Map Signatures
1. Hydrology Studies	15 bd	10 bd	5 bd	N/A
2. Traffic Studies	15 bd	10 bd	5 bd	N/A
3. All other Land Use Applications	15 bd	10 bd	5 bd	5 bd

\*If 3<sup>rd</sup> or subsequent review is required

- (c) Developer shall have the option to request County to utilize a consulting firm or outside consultant ("Consultant") to process the Application at Developer's expense pursuant to the provisions of subsection (d) below. County may also, in its own discretion, utilize a Consultant.
- (d) Whenever the Parties utilize a Consultant, the Consultant shall enter into a standard County professional services agreement governing the terms of their relationship ("Consultant Agreement"). The Consultant Agreement shall contain the following provisions:
  - (1) Developer shall pay cost of the Consultant; and
  - (2) The Developer shall have the right to evaluate the performance of the Consultant.
- (e) The Parties' decision to use a Consultant does not extend the time frames set forth in the county Schedule without the mutual written agreement of the parties.

## **SECTION 5 REVIEW AND DEFAULT**

### ***5.1 Frequency of Reviews; Biennial Review.***

Pursuant to NRS Chapter 278.0205.1 and Section 16.32.110 of the Code, the BoCC may, pursuant to written notice to Developer, review the development once every twenty-four (24) months during the term of this Agreement. In the event the BoCC provides such notice, Developer shall have sixty (60) days to provide a written report to BoCC containing information regarding the progress of development of the Proposed Development. In the event Developer fails to submit such a report, Developer shall be in default of this Agreement. If at the time of review an issue not previously identified in writing is required to be addressed, the review at the request of either party shall be continued to afford reasonable time for response.

### ***5.2 Opportunity to be Heard.***

The report required by this Section shall be considered solely by the BoCC in accordance with the rules and procedures of Section 16.32 of the Nye County Code. County and Developer shall each be permitted an opportunity to be heard orally and in writing before the BoCC regarding performance of the parties under this Agreement.

### ***5.3 General Provisions-Default.***

In the event of any noncompliance with any provision of this Agreement, the party alleging such noncompliance shall deliver to the other in writing not less than thirty (30) days after the event of noncompliance a notice of default. The time of notice shall be measured from the date of certified mailing. The notice of default shall specify the nature of the alleged default and the manner and period of time in which the default may be satisfactorily corrected, during which period the party alleged to be in default shall not be considered in default for the purposes of termination or institution of legal proceedings. Such cure period shall not be less than sixty (60) days, nor exceed ninety (90) days. If the default is corrected within the period, then no default shall exist and the noticing party shall take no further action. If the default is not corrected, the party charging noncompliance may elect any one or more of the following courses.

- (a) Option to Terminate. After proper notice and the expiration of the above-referenced period for correcting the alleged default, the party alleging the default may give (unless the default has been cured or waived prior to such date) notice of intent to amend or terminate this Agreement as authorized by NRS Chapter 278. Following any such notice of intent to amend or terminate, the matter shall be scheduled and noticed as required by law for consideration and review solely by the BoCC.
- (b) Amendment or Termination by County. Following consideration of the evidence presented before the BoCC and a finding that a default has occurred by Developer and remains uncorrected, County may amend (pursuant to Section 3.9) or terminate this Agreement. In the event of default by Developer, County shall have the option, in its discretion, to maintain this Agreement in effect, and seek to enforce all of Developer's obligations hereunder under the procedures set forth in this Section and Section 5.5. County also reserves the right to terminate this Agreement and pursue collection and/or performance of any of Developer's obligations that were required by this Agreement up to the point of termination. Termination shall not in any manner rescind, modify, or terminate any vested right in favor of Developer, as determined under the Applicable Rules and Nevada Law, existing or received as of the

date of the termination and to the extent that Developer has performed its obligations under this Agreement. Developer shall have sixty (60) days after receipt of written notice of termination to institute legal action pursuant to Section 5.5 hereof.

- (c) Termination by Developer. In the event County substantially defaults under this Agreement, Developer shall have the right to terminate this Agreement after the hearing set forth in this Section. Developer shall have the option, in its discretion, to maintain this Agreement in effect, and seek to enforce all of County's obligations hereunder under the procedures set forth in this Section and Section 5.5.
- (d) Waiver. Failure or delay in giving notice of default shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies in respect of any default shall not operate as a waiver of any default or any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any of its rights or remedies.

#### ***5.4 Unavoidable Delay, Extension of Time.***

Neither party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by governmental entities, failure of governmental agencies (other than County) to perform acts or deeds necessary to the performance of this Agreement, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, litigation, or similar matters beyond the control of the parties ("Force Majeure"). In addition, nonperformance of a party hereunder shall be excused as a result of the failure of the other party to perform under this Agreement which failure of the other party actually causes such nonperformance. If written notice of any such delay is given to County within sixty (60) days after the commencement of a Force Majeure, an automatic extension of time, unless otherwise objected to by County within thirty (30) days of such written notice, shall be granted coextensive with the period of the Force Majeure, or longer as may be required by circumstances or as may be subsequently agreed to between County and Developer.

#### ***5.5 Legal Action.***

County and Developer agree that they would not have entered into this Agreement if either were to be liable for damages under or with respect to this Agreement that would be greater than without this Agreement. Accordingly,

County and Developer may pursue any course of action or equity available for breach, except that neither party shall be liable to the other or to any other person for any monetary damages for a breach of this Agreement that are greater than such damages or liability would have been without this Agreement pursuant to the Applicable Rules. Prior to the institution of any legal action, the party seeking legal action must give the thirty (30) day notice of default as set forth in Section 5.3. Following such notice, and the failure of the notified party to cure such non-compliance within the time period set forth in Section 5.3 , a public hearing must be held by the BoCC where the allegations will be considered and a decision regarding their merits will be reached. Any judicial review of this decision or any legal action taken pursuant to this Agreement will be heard by the court, and the decision of the BoCC shall be reviewed in conformance with Nevada law. Judicial review of the decision of the BoCC shall be limited to the evidence presented to the BoCC at the public hearing. Jurisdiction for judicial review or any judicial action under this Agreement shall reside exclusively with the Fifth Judicial District Court, State of Nevada.

### ***5.6 Notices.***

All notices required by this Section shall be sent in accordance with Section 9.

### ***5.7 Applicable Laws; Attorneys' Fees.***

This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. Each party shall bear its own attorneys' fees and court costs in connection with any legal proceeding hereunder.

## **SECTION 6. INFRASTRUCTURE OBLIGATIONS AND LAND USE MITIGATION MEASURES**

### ***6.1 Generally***

- (a) Developer shall provide the infrastructure and land use mitigation measures described in this Section.
- (b) All bonds, including performance bonds, letters of credit and bank guarantees to be provided by Developer that are required to provide financial assurance for the provision or maintenance of infrastructure pursuant to this Section must be issued by an entity that has at least an AAA rating with A.M. Best, A- by Standard and Poors or Baa3 by Moody's Investor Services, obtained by Developer to cover One Hundred and Fifteen percent (115%) of the estimated cost of infrastructure identified by any Master Studies or the County Engineer or his or her designee.

- (c) Developer shall make a good faith effort to purchase a reasonable amount of goods related to operation of the facility from Nye County vendors; provided such goods are comparable in price, quality and availability to goods otherwise available for purchase by Developer and such goods are not subject to an exclusive purchasing contract. Developer shall conduct annual vendor information sessions in Nye County to educate vendors regarding Developer's procurement process.

To the extent allowed under applicable laws, Developer shall accept delivery of all construction and related materials within the boundaries of the Proposed Development. Notwithstanding the above, Developer shall pay a use tax in accordance with NAC 372.055 for any construction and related materials for which Developer cannot through reasonable diligence accept delivery at the Proposed Development, or such delivery would result in an unreasonable delay to the construction of the Facility. Provided, however, nothing in this paragraph shall require payment of a use tax to the extent Developer has been granted a partial abatement pursuant to NRS 701A.300 to 701A.390 (AB 522-2009-Sections 28 and 106.5). Developer shall provide County with copies of all sales tax filings it makes with the State of Nevada. County shall have the right to audit such filings to ensure compliance with the provisions of this Agreement.

- (d) County acknowledges that certain rights-of-way and easements outside the boundaries of the Proposed Development may be necessary for development and construction of the improvements described in this Agreement. The County shall cooperate (including, where applicable, being the applicant for state and federal approvals) with Developer (at Developer's cost and expense) in obtaining such necessary rights-of-way and easements, so as not to delay development and construction of such improvements. In the event the parties are unable to obtain the necessary right-of-way or easement in the time or manner consistent with the Developer's obligation to complete the improvement, County and Developer may agree to adjust the timeline. In the alternative, and when supported in the studies contemplated by this Agreement, the parties may agree, in writing, that Developer may proceed with the development and use of an alternative right-of-way or easement approved by County.
- (e) Developer shall comply with the applicable provisions of NRS 361.157 and NRS 361.159.

- (f) Prior to commencement of construction, Developer shall amend the boundaries for its BLM right of way application to remove all property (north/south/east/west) of the alignment of (Street/Road/etc.)

## **6.2 Emergency Services**

- (a) Facility Emergency Plan. Prior to accepting hazardous materials within the boundaries of the Proposed Development, Developer shall provide the County a facility emergency plan which contains:
  - 1) a description of the training, equipment, facilities and procedures that will be used to respond to emergencies occurring within the boundaries of the Proposed Development; and
  - 2) certification that such equipment, facilities and procedures have been approved by all applicable state and federal authorities.
- (b) Response Protocols. County and Developer shall jointly develop emergency response protocols and shall jointly establish the respective responsibilities of the Parties.
- (c) Sheriff. Within 60 days of obtaining financing for construction of the (Project), and annually thereafter for the term of the Agreement, Developer agrees to pay County (Amount) for County's use in providing law enforcement services. County agrees to use such funds solely for the purpose of providing law enforcement services in the (City/Town).
- (d) Fire Protection Training. Developer shall annually, for as long as the (Project) is operating, provide emergency and fire protection training for up to four (4) individuals identified by County. County shall give priority to individuals who serve in the (City/Town) Fire Department. Such training shall be the equivalent of training provided to Developer's on-site personnel.
- (e) Water Supply. Within 60 days of obtaining financing for construction of the (Project), Developer shall provide County, in a location selected by Developer, for as long as the (Project) is operating, access to a water supply for County's use in responding to fires within the (City/Town). County agrees to utilize the water supply only for such purposes.

## **6.3 Medical Services**

Within 60 days of obtaining financing for the construction, and annually

thereafter for the term of the Agreement, Developer agrees to pay County **(Amount)** for County's use in providing staff and equipment for County's medical clinic for the benefit of community medical services. County agrees to use such funds solely for such purpose.

#### **6.4 Water.**

The parties acknowledge that the Developer will have adequate water rights for the Property and the County has no role in the allocation of water. Developer shall advise County of all applications it files for state or federal approval of the appropriation and use of water for the Proposed Development.

#### **6.5 Sanitary Sewer.**

- (a) Developer shall provide sanitary sewer system facilities as needed to mitigate the impacts of the Proposed Development. County has no obligations, and is not obligated to pay any financial costs, associated with obtaining the construction or maintenance of sanitary sewer facilities or the acquisition of rights-of-way, permits, easements, or other interests not owned by Developer necessary to construct the facilities required in this Section.
- (b) With respect the location, design and operation of any proposed wastewater treatment facility, the Developer shall ensure full compliance with applicable Nevada State laws and regulations, and in particular, the implementation of NAC 445A.285 and Nevada Division of Environmental Protection WTS-21.

#### **6.6 Transportation.**

- (a) Traffic Studies. Prior to commencement of construction, Developer shall submit a Master Traffic Impact Analysis for review and approval by County. The Analysis shall address the impacts, if any, of the transportation of employees to and from the Proposed Development. Developer shall provide the improvements required in the approved Master Traffic Impact Analysis in order to mitigate the land use impacts of the Proposed Development.
- (b) **(Access Road)** Developer will improve **(Access Road)** (the "Access Road"), in accordance with the approved Master Traffic Impact Analysis. County agrees that, until such time as the Access Road is completed and available for use, Developer can utilize other access routes depicted on Exhibit E. Upon completion of construction of the Proposed Development, Developer shall restore the Access Road to the standards prescribed in the Master Traffic

## Impact Analysis.

- (c) Realignment of (Street/Road/etc.). Developer, at its cost, shall realign (Street/Road/etc.) in conformance with the Land Use Plan. The current alignment of (Street/Road/etc.) shall remain open and available for use by the general public until construction of the new alignment is complete. Upon completion of construction of the new alignment: 1) Developer shall dedicate or otherwise transfer rights to the new alignment to County; and 2) County shall vacate or abandon its interests in the old alignment.
- (d) Reimbursement for Cost to Construct the Access Road. County acknowledges that the Access Road may provide benefit to property outside the Proposed Development. Therefore, County agrees to require, as allowed by law, as a condition to development of any such benefitting properties, that the proponent of the development reimburse a prorata share of Developer's cost to improve and restore the Access Road. If reimbursements are made, County either will collect them from other benefitting properties and reimburse Developer in an amount equal to such reimbursements or facilitate direct payment to Developer, as allowed by law. For purposes of this subsection, the Access Road shall be deemed to provide a benefit to property if based on applicable law, either: 1) the property takes access to or from the Access Road; or 2) the proposed development will create significant traffic that will use the Access Road.

## **6.7 Storm Drainage**

- (a) Technical Drainage Study. Prior to commencement of construction, Developer will submit to the County a Technical Drainage Study for the Proposed Development for review and approval by the County. Developer shall provide the improvements required in the approved Technical Drainage Study in order to mitigate land use impacts of the Proposed Development.
- (c) Maintenance and repair of all proposed easements for drainage/utility use shall be the sole responsibility of the Developer. The Developer shall provide a maintenance bond or letter of credit to the County to guarantee maintenance and repair of all drainage and storm water management facilities and utility easements while this Agreement is effective or while Developer has the right to use the Property, whichever is longest. The amount of the security shall be a minimum of 115% of estimated costs.

**6.8 Assurance for Completion and Maintenance of Improvements.**

Developer shall provide performance bonds or irrevocable commercial letters of credit for all roadway and storm drainage improvements that are identified in this Agreement and/or through an approved Master Traffic Impact Analysis and the approved Technical Drainage Study. Such bond amounts or letters of credit shall reflect 115% of the total estimated cost for the work to be done by Developer under this Agreement as determined or approved by the Director of Public Works, and shall be adjusted no less frequently than every two years, for inflation and escalation in construction cost using a published and generally accepted cost index.

**6.9 Maintenance of Landscape Buffer Improvements.**

Developer may, with the BOCC's written consent, transfer maintenance of some or all of the improvements shown on the Landscape and Buffer Plan to County. In such event, the Parties shall execute a license and maintenance agreement or other binding documentation, which shall require Developer to reimburse County for its annual costs to complete the maintenance.

**6.10 Limitation on Developer's Obligations**

Except for the payment of applicable sales and property taxes (less allowable reductions and abatements), Developer shall have no obligation to participate in, pay, contribute or otherwise provide any further exaction, including assessments or fees, or to provide facilities or improvements beyond those specifically identified in this Agreement.

## **SECTION 7. EMPLOYMENT**

The parties agree that the provision of employment opportunities for local and County residents will assist in mitigating the impacts of the Proposed Development, and acknowledge that the Developer has an incentive to hire local or County residents. Accordingly, Developer agrees that, during operations, it will use commercially reasonable efforts to ensure that a significant portion of the personnel employed and assigned to the project will be full time employees with benefits. Developer further agrees that it will conduct public meetings in the (City/Town) to provide information about employment opportunities relating to the Proposed Development: 1) at least twice prior to commencement of construction; and 2) at least twice prior to commencement of operations. Developer further agrees to assist the (College/University) in developing a curriculum to train potential employees.

Subject to all applicable legal requirements, conditions of financing, and other requirements applicable to the (Project), including but not limited to Department of Energy Loan Guarantee requirements, Davis-Bacon and related Acts, and any other applicable requirements, Developer will make commercially reasonable efforts to hire applicants who reside in Nye County for the construction and operations of the (Project) and to request its contractors and subcontractors for the construction and operations of the (Project) to do the same, provided that such applicants are in Developer's sole discretion qualified for such employment. Developer will provide County prior notice of its intent to enter into any labor agreement for the construction or operation of the (Project).

## **SECTION 8. CONSTRUCTION STANDARDS AND INSPECTIONS**

### **8.1 Construction Standards.**

(a) County and Developer acknowledge that construction of the Proposed Development will be governed by specialized state and federal codes and regulations (the "Construction Standards"). It is the parties' intent to establish a procedure for certifying compliance with the Construction Standards that minimizes unnecessary delay and cost to both County and Developer.

(b) Prior to commencing construction, Developer shall provide County:

- 1) a description of the applicable Construction Standards;
- 2) a list of the state, federal and other authorities responsible for ensuring compliance with the Construction Standards;
- 3) the qualifications needed for a person to inspect construction within the Proposed Development and to certify compliance with the Construction Standards; and
- 4) a copy of all construction plans and drawings prepared for use in certifying compliance with the Construction Standards.

### **8.2 Inspection and Certification.**

Developer shall have construction within the Proposed Development inspected by an independent consultant with the qualifications set forth in section 8.1 (b) (3) above. Upon completion of each inspection, Developer shall provide County a certification from the consultant that the

- 8.3 construction complies with the Construction Standards.  
Conflict with Applicable Rules.

To the extent that the Construction Standards conflict with the Applicable Rules, the Construction Standards shall control. The provisions of Chapters 15.16 and 15.20 of the Code shall govern only if: i) the proposed construction activity is specifically governed by those chapters; and ii) the activity is not governed by the Construction Standards.

## SECTION 9. NOTICES/RECORDATION.

- 9.1 All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person or mailed by express mail or certified mail postage prepaid, return receipt requested. Notices shall be addressed as follows:

To County: County of Nye,  
A political subdivision  
\_\_\_\_\_  
Pahrump, Nevada \_\_\_\_\_  
Attention: Planning Director

To Developer: (Company Name)  
(Street Address Line 1)  
(Street Address Line 2)  
(City, State, Zip)

With Copy to: (Company Name)  
(Street Address Line 1)  
(Street Address Line 2)  
(City, State, Zip)

Either party may change its address and/or contact persons by giving notice in writing to the other and thereafter notices, demands and other correspondence shall be addressed and transmitted to the new address. Notices given in the manner described shall be deemed delivered on the day of personal delivery or the date delivery of mail is first attempted.

- 9.2 Recording. Promptly after execution hereof, County shall record an executed original of this Agreement in the Official Records of Nye County, Nevada. Upon completion of the performance of this Agreement, or its

earlier expiration, revocation or termination, a statement evidencing said completion, revocation or termination shall be signed by the appropriate officers of the County and Developer and shall be recorded in the Official Records of Nye County, Nevada.

## **SECTION 10. SEVERABILITY OF TERMS.**

If any term or other provision of this Agreement is held to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, provided that the invalidity, illegality or unenforceability of such terms does not materially impair the parties' ability to consummate the transactions contemplated hereby. If any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall, if possible, amend this Agreement so as to affect the original intention of the parties.

## **SECTION 11. DURATION OF AGREEMENT.**

- 11.1** Except as provided herein, this Agreement shall expire 5 years after the Effective Date.
- 11.2** Developer may terminate this Agreement any time prior to commencement of construction by delivering written notice to County that Developer was unable to obtain financing or any required state or federal approval of the Proposed Development.
- 11.3** The BoCC may, in its reasonable discretion, extend the term of this Agreement upon the following conditions:
- (a) Developer provides written notice of its desire for an extension to County prior to the expiration of the original term of this Agreement; and
  - (b) Developer is not in default of this Agreement.
- 11.4** When approved by the BoCC, the extension shall be granted in writing after:
- (a) notice of intention to amend the Agreement has been published as provided in NRS 278.0205; and
  - (b) the BoCC has approved an ordinance approving the extension that includes:

- (1) a statement of the justification for the extension; and
- (2) the duration of the extension; and
- (3) any further conditions agreed to by the BoCC and the applicant, which conditions may be incorporated by reference in the ordinance.

**11.4** Expiration of this Agreement, or any extension thereof, shall not in any manner affect Developer's right to operate the (Project), and shall not rescind, modify or terminate any vested right in favor of Developer, as determined by Nevada law, to the extent that Developer has performed its obligations under this Agreement.

Permanent cessation of operations and decommissioning of the (Project) shall be done in compliance with all applicable state and federal permits and regulations.

In Witness Whereof, this Agreement has been executed by the parties on the day and year first above written.

COUNTY:

DEVELOPER:

Board of County Commissioners

(Developer Name)

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Approved as to Form:

Title: \_\_\_\_\_

\_\_\_\_\_

SUBSCRIBED AND SWORN TO before  
me  
on this \_\_\_\_ day of \_\_\_\_\_,  
2010.

Attest:

County Clerk

By: \_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for said County  
and State

EXHIBIT A

Legal Description and Map Showing Boundaries of Property Subject To Agreement

EXHIBIT B

Land Use Plan

EXHIBIT C

Landscape and Buffer Plan

EXHIBIT D

Description of Project/Permitted Uses

EXHIBIT E

Map Showing Access Routes

**EXHIBIT A**

LEGAL DESCRIPTION

AND

MAP SHOWING BOUNDARIES OF PROPERTY SUBJECT TO  
AGREEMENT

## **EXHIBIT B**

### LAND USE PLAN

# EXHIBIT C

## LANDSCAPE & BUFFER PLAN

## **EXHIBIT D**

### DESCRIPTION OF PROJECT/PERMITTED USES

## Description of Project/Permitted Uses

### **Project Summary**

#### **Example Summary Headers**

**Power Blocks**

**Thermal Energy Storage**

**Cooling Systems**

**Buildings within the Power Block**

**Electrical System**

**Water Supply and Use**

**Hazardous Materials Management**

**Wastewater Treatment**

**Fire Protection**

**Telecommunications and Telemetry**

**Lighting System**

**Fencing and Security**

**Temporary Construction workspace, Yards, Staging Areas**

**Site Drainage and Earthwork**

**Construction**

**Operations and Maintenance**

# EXHIBIT E

MAP SHOWING ACCESS ROUTES