

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT RELATIVE TO CAT CREEK ENERGY, LLC CONDITIONAL USE PERMITS (CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07)

This First Amendment to Development Agreement Relative to Cat Creek Energy, LLC Conditional Use Permits (CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07) (the “Amendment”) is entered into this ___ day of _____, 2018, (“Effective Date”), by and between Elmore County (the “County”), a political subdivision of the State of Idaho, and Cat Creek Energy, LLC, an Idaho limited liability company (the “Developer”) (collectively, the “Parties”).

WITNESSETH:

WHEREAS, The Parties entered into a Development Agreement on February 9, 2018;

WHEREAS, As part of the Development Agreement, the Parties agreed to defer negotiations and agreement on certain provisions related to water diversion and delivery to a later date, not to exceed December 31, 2018,

WHEREAS, The Parties have now had an opportunity to negotiate certain provisions related to water diversion and delivery and the Parties desire to memorialize the terms as more fully set forth herein; and

WHEREAS, The Parties desire to enter into this First Amendment to Development Agreement to replace Section 2.2 of the Development Agreement which states:

2.2. Water Storage and Delivery. Given the complexities of water diversion and delivery related to the Project, and in an effort to move the Project forward without further delay, the County and Developer have agreed to defer the negotiation and execution of all Water Diversion and Delivery Agreements to a later date, to be heard after notice and public hearing, but which shall be done prior to December 31, 2018 or the CUP related to water shall lapse.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the Parties agree as follows:

AMENDMENT

The Parties hereby agree to replace Section 2.2 of the Development Agreement with the following:

2.2 Water Diversion and Delivery.

(a) The Developer shall divert and deliver water at a rate of up to 200 cubic feet per second (cfs) to the County under its water right, in priority, on a continuous flow basis, from

the South Fork Boise River to Little Camas Reservoir by use of Developer's infrastructure, as long as (1) the water can be accepted into Little Camas Reservoir, as determined by the Mountain Home Irrigation District, in its sole discretion; and (2) the water diversion and delivery does not prevent the Developer from performing its ordinary water operations, which term is defined as generating electricity via hydro-power or performing ordinary maintenance of its hydro-power infrastructure and (3) Cat Creek Reservoir stored water is at least 20,000 acre feet. Developer's duty to divert and deliver water to the County shall be suspended during any emergency conditions that may exist outside of the Developer's control. The Developer agrees to use commercially reasonable efforts not to schedule maintenance work during the anticipated water diversion and delivery time periods for the County.

(b) For those years when the County elects to take water delivery under Section 2.2 (a) above, charges for water diversion and delivery shall be billed to the County based on the Developer's actual cost of electricity for pumping the quantity of water diverted and delivered to the County under its water right. Billing invoices from the Developer shall specify the total amount of water pumped, diverted and discharged to the Anderson Ranch Reservoir by the Developer and the total amount of water diverted and delivered into Little Camas Reservoir for the benefit of the County for the twelve (12) month period in which the County takes water delivery. The Developer shall invoice the County within ninety (90) days from the end of water delivery to the County for that water delivery period and provide copies of its electricity cost and its water diversion records to the County with the annual invoicing. Payment by the County shall be due and payable thirty (30) days after receipt of the annual invoicing.

(c) The Developer consents to use of its diversion point for diversion of water under the County's water right.

(d) The County will inform the Developer, or its designated agent, no less than twenty-four (24) hours prior to any County request for diversion and delivery of water under its water right. Provided, however, the County shall be under no obligation to request diversion or delivery of any water, or accept any water, and any County request for water diversion or delivery shall be in the County's sole discretion.

(e) The Developer has withdrawn its pending protest at the Idaho Department of Water Resources against the County's application for water permit no. 63-34348. The County has withdrawn its protest against Developer's water right application No. 63-34403 filed with the Idaho Department of Water Resources.

(f) The Developer, the Landowners, the County, and their agents, consultants, and employees shall act in good faith regarding the County and Developer's pursuit of a water permit and license under their respective applications, pending before the Idaho Department of Water Resources, and shall also act in good faith regarding the County and Developer's relationship with the Mountain Home Irrigation District.

(g) Notwithstanding anything in the Development Agreement to the contrary, the County's obligations to pay for electricity for pumping expense under Section 2.2(b) of the Amendment in connection with the diversion and delivery of water by the Developer to the County under Section 2.2(a), shall be subject to and dependent upon the appropriations

being made in the fiscal year for the diversion and delivery of water by the Elmore County Board of Commissioners for such purpose.

ALL OTHER PROVISIONS OF THE DEVELOPMENT AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, this Amendment has been executed by the Parties hereto on the day and year first above written.

ELMORE COUNTY:

Board of Elmore County Commissioners

By: Wesley R. Wootan, Commissioner

By: Franklin L. Corbus, Commissioner

ATTEST:

Barbara Steele, Elmore County Clerk
STATE OF IDAHO)

) ss.

County of Elmore)

On the ____ day of _____, 2018, before me, _____, a Notary Public in and for said state, personally appeared WESLEY R. WOOTAN, Commissioner of **Elmore County**, a political subdivision of the State of Idaho, the county that executed the foregoing instrument, who duly acknowledged to me that such county executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC for Idaho
Residing at _____, Idaho
My commission
expires:_____

