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**DEVELOPMENT AGREEMENT
PIKE SOLAR PROJECT**

This Development Agreement ("Agreement") is entered into this 1st day of March, 2022 ("Effective Date") by and between El Paso County, by and through the Board of County Commissioners of El Paso County, Colorado, a statutory county and political subdivision of the State of Colorado ("County"), the City of Fountain, Colorado, a statutory city and political subdivision of the State of Colorado ("City"), and Pike Solar LLC, a Delaware limited liability company ("Developer"). County, City, and Developer may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. Developer desires to construct and operate in unincorporated El Paso County a renewable solar energy facility known as the Pike Solar Project ("Project") on Property legally described in Exhibit A attached hereto and a map of which is set forth in Exhibit B attached hereto. The Property is owned by the City of Colorado Springs, and Developer has entered into a lease with the City of Colorado Springs to install and operate the Project and obtain all necessary approvals therefor.

B. The Project falls within the scope of the County's authority under Guidelines and Regulations for Areas and Activities of State Interest of El Paso County, contained in Appendix B of the El Paso County Land Development Code ("1041 Regulations"). The Project specifically falls within the scope of and must obtain a 1041 Permit under Chapter 5, Site Selection and Construction of Major Facilities of a Public Utility, of the 1041 Regulations.

C. The WSE-O, Wind and/or Solar Energy Generation Plan Overlay District zoning classification, found in Section 4.3.5 of the El Paso County Land Development Code ("Code"), requires Developer to submit and obtain approval of a WSE-O Plan and a development impact mitigation agreement in connection with the WSE-O rezoning in order to site solar energy generation facilities like those in the Project. The development agreement must address and mitigate any external impacts to nearby properties and existing infrastructure.

D. Pursuant to Section 1.106 of the 1041 Regulations, Developer must comply with both the 1041 Regulations and the County's zoning regulations, specifically the WSE-O Overlay.

E. The Parties recognize that the Project will create impacts on public infrastructure and property and that the purpose of this Agreement is to provide for the identification and mitigation of those impacts that can be quantified and to estimate in good faith a monetary value for any impacts that may not be readily identifiable or quantifiable under the 1041 Permit and WSE-O Overlay zoning processes.

Chuck Broerman
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El Paso County, CO

222030637

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises contained here and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Recitals set forth above shall be incorporated by reference into this Agreement as if fully stated herein.
2. General Project Description. The Project is a 175 MW solar energy generation and storage facility consisting of photovoltaic modules aligned in arrays and affixed to a single-axis tracking system, a centralized AC-coupled battery energy storage system, a substation, an operations and maintenance building, and associated infrastructure, hereinafter collectively referred to as "Project Facilities."
3. Compliance with Applicable Laws. Developer must comply with all applicable federal, state, and local laws, ordinances, rules, and regulations and all applicable approvals, permits, and licenses in the construction, operation, and decommissioning of the Project. Developer may not commence any construction or installation activity related to the Project until obtaining all necessary approvals, permits, and licenses required to be obtained prior to such commencement of construction or installation. Without limiting the generality of the foregoing, Developer shall obtain all of the following to the extent applicable to the Project: the Site Development Plan, appropriate documentation from the U.S. Fish & Wildlife Service and Colorado Parks & Wildlife in a form reasonably satisfactory to the County regarding threatened and endangered species, any water well decrees, determinations, and well permits that may be required by the Colorado Department of Natural Resources, and any water quality permits or approvals required by the Colorado Department of Public Health and Environment, and providing proof of the same to the County.
4. Time Limit on Installation and Construction. Developer shall initiate construction of the Project within one (1) year of the Effective Date and shall have three (3) years from the Effective Date to achieve Substantial Completion. For purposes of this Agreement, Substantial Completion means that the Project has completed construction activities, including restoration of any required areas, and is generating electricity. If the Developer does not begin construction within one (1) year of the Effective Date, then the Board of County Commissioners, at an open and public hearing following legal published notice, may elect to approve a rezoning of the Property for the purpose of removing the WSE-O Overlay zoning. Said one (1) and three (3) year periods shall be extended for any delays arising by an event of force majeure. In the event Developer has not achieved Substantial Completion by the end of the 3-year period, including any extensions arising from the application of an event of force majeure, the County may require Developer to seek an extension of the WSE-O Overlay zoning and/or an amendment to the 1041 Permit, or the Board of County Commissioners, at an open and public hearing following legal published notice, may elect to approve a rezoning of the Property for the purpose of removing the WSE-O Overlay zoning.

5. **Project Facilities Repair, Maintenance, and Replacement.** Developer shall be permitted to repair and maintain the Project Facilities without any further approval from the County or amendment to this Agreement, and to replace any element of the Project Facilities with a comparable element that is within the size limits and general configuration defined in the 1041 Permit and WSE-O Overlay zoning, is located in the same location as the element being replaced, and meets the Development Standards in the 1041 Permit and WSE-O Overlay zoning. The transportation and construction-related activities associated with the Project Facilities replacement process may require the Developer to obtain additional administrative permits prior to initiating construction.

6. **Identification of Haul Routes.** The Parties agree that the Project, particularly during construction, will impact County and City paved and unpaved roads based on the number of anticipated trips per day and the weight of the vehicles making such trips. Developer has identified three Haul Routes along public roads to and from the Project site. The Haul Routes and the jurisdictions responsible for their maintenance are depicted in Exhibit C, attached hereto.

- a. Northern Route: The Northern Route exits I-25 at State Highway 16 and continues along State Highway 16, Mesa Ridge Parkway, Marksheffel Road, Link Road, and Squirrel Creek Road to a private road which accesses the Project site. This route is to be used for daily personnel traffic to and from the Project site.
- b. Southern Route: The Southern Route exits I-25 at Old Pueblo Road and continues along Old Pueblo Road and Birdsall Road to a private road which accesses the Project site. This route is to be used to haul materials and equipment to the Project site.
- c. Oversize Load Route: The Oversize Load Route, which will be defined in an approved County Haul Permit, and will depend on trucking requirements for turn radii. This route is to be used to transport oversize loads that cannot be accommodated along the Southern Route. The Oversize Load Route and Southern Route may be collectively referred to herein as the "Restricted Routes." Although Developer's current plan is to use the Northern Route to transport such oversize loads, the actual route constituting the Oversize Load Route ultimately will be determined in connection with the approval of the County Haul Permit.

7. **Identification of Impacts to Haul Routes.**

- a. Developer shall prepare or cause to be prepared Road Condition Surveys for each Haul Route prior to commencing construction of the Project, one year after commencement of construction, and after Substantial Completion of the Project. Each Road Condition Survey shall be conducted in accordance with the Road Condition Survey Work Plan attached hereto as Exhibit D and shall be shared with the County within three (3) business days of completion.
- b. Once construction commences and until Substantial Completion of the Project, Developer shall also make visual observations of the Southern Route every two weeks and of the Oversize Load Route following each day of use and complete a

Road Report, attached hereto as Exhibit E, documenting such observations, comparing them to prior observations and the most recent Road Condition Survey, and identifying any new damage to the roads and rights-of-way. Developer shall share such Road Report with the County and City, as applicable, within two (2) business days of completion.

- c. County and City staff may also conduct periodic inspections of the Haul Routes at their discretion and shall complete a Road Report if any damage to a road or right-of-way is observed. Such Road Reports shall be shared with the other Parties within two (2) business days of completion.

8. Mitigation of Impacts to Haul Routes.

- a. **Road Damage During Construction.** Should any Road Report or Road Condition Survey completed by any Party identify new damage to a road or right-of-way along a Haul Route, the Developer and the County or the City, as appropriate, shall make best efforts to meet within three (3) business days to determine whether such damage was caused wholly or partially by Developer's activities related to the Project and, if so, whether the damage shall be repaired by Developer, the County, or the City. If the damage is to be repaired by the Developer, Developer must obtain all appropriate permits and approvals, including but not limited to a City or County Work-in-the-Right-of-Way permit, prior to conducting such work. If the damage is to be repaired by the County, the funds necessary to reimburse for the cost of such repairs may be withdrawn from the funds provided by Developer pursuant to paragraphs 8.b. below, as applicable.
- b. **Long-Term Maintenance Impacts to County Roads.** County and Developer agree that the projected use of the County roads located within the Restricted Routes by construction and other heavy vehicles will shorten the useful life of the County roads on such routes in a manner that is not easily identified or quantified. The County and Developer agree that a reasonable estimate of the cost of such long-term impacts is One Hundred Thirty-Three Thousand Five Hundred Six Dollars and 38/100 (\$133,506.38) (the "County Road Funds"). Developer shall deposit this sum with the County in connection with approval of the Site Development Plan, and the County shall keep the funds in a restricted account separate from its general fund.

If road damage identified pursuant to paragraph 8.a. above is repaired by the County, the County may withdraw from the County Road Funds the amount necessary to reimburse itself for the cost of such repairs. If no County Road Funds are available due to previous reimbursements, the Developer shall reimburse the County for road damage repairs within thirty (30) days of receiving an invoice for such repairs. If Developer repairs road damage to a County road pursuant to paragraph 8.a. above, and the County-approved scope of such work exceeds that necessary to repair road damage wholly caused by Developer's Project activities, the County may authorize the return to Developer of escrow funds for the additional work. If any County Road Funds remain after Substantial Completion of the Project, the County shall be entitled

to retain such moneys as liquidated damages for the negative impacts to the useful life of the County roads located within the Restricted Routes.

- c. **Long-Term Maintenance Impacts to City Roads.** The City and Developer agree that the projected use of the City roads located within the Northern Route or the Oversize Load Routes by construction and other heavy vehicles will shorten the useful life of the City roads on such routes in a manner that is not easily identified or quantified. As such, the City and Developer agree that a reasonable estimate of the cost of such long-term impacts is One Hundred Thirty-Three Thousand Five Hundred Six Dollars and 38/100 (\$133,506.38) (the "City Road Funds"). Developer shall pay this sum to the City in connection with approval of the Site Development Plan, and the City shall use the funds to pay for mitigation to any damage caused partially by the Developer. The City Road Funds shall be a complete and final accounting of damage caused that will shorten the life of City roads or any other damage of which the Developer is partially responsible.

If road damage identified pursuant to paragraph 8.a. is determined to have occurred wholly by the Developer, Developer shall be responsible for payment and construction of such repairs.

- d. **Use of Alternate Routes by Construction Traffic.** The Parties agree that use of any route other than the Restricted Routes by construction and other heavy vehicles hauling materials and equipment to the Project site may result in damage to public roads and may shorten the useful life of such roads. The Parties also agree that this Agreement does not account for those damages and impacts on public roads outside the Restricted Routes. Developer shall be held responsible for the use of any road other than the Restricted Routes by its employees, contractors, and agents driving construction and other heavy vehicles to and from the Project site ("Unauthorized Use"). Should an Unauthorized Use be observed by County employees or documented by photo, video, or other corroboration of an observation by a member of the public or other third party, the Developer shall pay to the County Two Thousand Dollars (\$2,000) for each day such Unauthorized Use occurs as liquidated damages for any resulting damage or negative impact to the public roads used. Developer shall pay such liquidated damages to the County within fourteen (14) days of receiving notice, along with any supporting evidence, of an Unauthorized Use.

9. **Contacts/Party Representatives.** The Parties designate the following representatives to receive all Road Reports and other notices and communications related to this Agreement. A Party may substitute its representative by providing written notice to the other Parties.

For the County:
Planning and Community Development
DSD-POD@elpasoco.com
719-520-6300

For the City:
City of Fountain
116 S. Main St. Fountain, CO 80817
Attn. Todd Evans, Deputy City Manager 719-322-2022

For the Developer:
JSI Construction Group LLC 1710 29th Street, Suite 1068 Boulder, CO 80301

Attn: Project Manager
Telephone: (720) 838-2302
Attn: General Counsel
Telephone: (720) 838-2290

10. El Paso County Road Impact Fee. Developer understands and agrees that the Project is subject to the provisions of the El Paso County Road Impact Fee and that the imposition of such Road Impact Fee is separate and does not arise from the 1041 Permit, the WSE-O Overlay zoning, or this Agreement. The Road Impact Fee shall be assessed at the time of Site Development Plan approval.

11. General Provisions.

- a. **Indemnity.** The Developer and its successors and assigns shall indemnify and hold harmless the County and City and their respective elected officials and employees, agents, and contractors from and against any and all losses, injuries, damages, claims, demands, suits, liabilities, causes of action, settlements, costs, or expenses that are caused by or result from the acts and omissions of Developer or its employees, officer, or agents arising from the installation, construction, operation, maintenance, repair, and decommissioning of the Project. Nothing in this paragraph shall be interpreted to limit or waive any of the immunities, rights, limitations of liability and defenses afforded the County and City under the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.*
- b. **Amendment.** This Agreement may be amended by mutual agreement of the Parties only by a writing signed by all Parties.
- c. **Assignment.** No Party may assign its rights and obligations under this Agreement without the prior written consent of all other Parties, which consent shall not be unreasonably withheld.
- d. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective personal representatives, heirs, successors, and assigns.
- e. **Waiver.** No delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof by any Party hereto, and no waiver by the Parties of a


breach of any provision of this Agreement shall be construed as a waiver of any subsequent breach hereunder.

- f. **Colorado Law and Venue.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of Colorado. In the event of any litigation that may arise hereunder, the Parties agree that jurisdiction and venue shall lie in the District Court of El Paso County, Colorado.
- g. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages shall be attached to a single instrument.
- h. **Severability/Integrated Terms and Conditions.** Because compliance with the terms and conditions of this Agreement is a condition of both the 1041 Permit and the WSE-O Overlay zoning, its terms and conditions are integrated into the 1041 Permit and the WSE-O Overlay zoning. Therefore, if any provisions of this Agreement are determined by a court of competent jurisdiction to be unenforceable or invalid, the 1041 Permit, the WSE-O Overlay zoning, and this Agreement shall be rescinded or suspended unless the Board of County Commissioners, in its sole subjective discretion, approves an amendment to the 1041 Permit, the WSE-O Overlay zoning, and/or this Agreement.
- i. **No Third-Party Beneficiary.** This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to create or grant to any third party or person any right or claim for damages or the right to bring or maintain any action at law or equity.
- j. **Entire Agreement.** This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties. This Agreement is specifically intended by the Parties to supersede all prior agreements, whether written or oral.
- k. **Recording.** This Agreement shall be recorded in the public records of the El Paso County Clerk and Recorder.

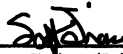
In witness of the foregoing provisions, the Parties have executed this Agreement as of the Effective Date Above.

ATTEST:

City of Fountain
Fountain, CO



City Clerk, Silvia Huffman



Scott Trainor (Feb 22, 2022 11:48 MST)
City Manager, Scott Trainor



Approved as to form:



City Attorney, Troy Johnson

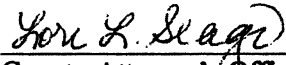
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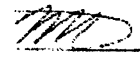

Chuck Epstein
County Clerk & Recorder
22-66A

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: 
Stan VanderWerf, Chair

Approved as to form:

County Attorney's Office

JSI Construction Group LLC,
a Delaware limited liability company


By: 
Name: Michael J. Martin
Title: President

STATE OF COLORADO :
: SS.:

COUNTY OF BOULDER :

The foregoing instrument was acknowledged before me this 17 day of February, 2022,
by Michael J. Martin, the President of JSI Construction Group LLC, on behalf of the limited
liability company.

JULIA A OCCHIUZZO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184038411
MY COMMISSION EXPIRES SEPTEMBER 27, 2022

Notary Public Signature 
My Commission Expires: September 27, 2022

In witness of the foregoing provisions, the Parties have executed this Agreement as of the Effective Date above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

Chuck Broerman
County Clerk & Recorder

By: _____
Stan VanderWerf, Chair

Approved as to form:

County Attorney's Office

JSI Construction Group LLC,
a Delaware limited liability company

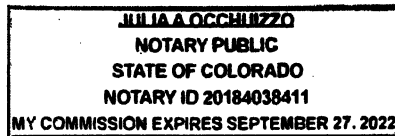
By: 
Name: Michael J. Martin
Title: President

STATE OF COLORADO :

: SS.:

COUNTY OF BOULDER :

The foregoing instrument was acknowledged before me this 17 day of February, 2022, by Michael J. Martin, the President of JSI Construction Group LLC, on behalf of the limited liability company.




Notary Public Signature 
My Commission Expires: September 27, 2022

EXHIBIT A

(Legal Description of Project Site)

