

MEMORANDUM OF UNDERSTANDING

Between

Sonoma County Permit and Resource Management Department and Borealis ESS, , LLC

This Memorandum of Understanding ("MOU" or "Agreement"), dated as of _____, 2024 ("Effective Date") is by and between the County of Sonoma Permit and Resource Management Department, (hereinafter "Permit Sonoma"), and Borealis ESS, , LLC, (hereinafter "Borealis"). Permit Sonoma and Borealis shall be collectively identified as the Parties.

AUTHORITIES

This Agreement is authorized under the provisions of Permit Sonoma Policy 8-0-7 Applicant Prepared Environmental Review and is consistent with the California Environmental Quality Act (CEQA), which provides that applicants of private development projects may prepare their own environmental documents subject to the County's own independent review and analysis. A draft environmental document may not be circulated by the County that does not represent the County's own independent judgment.

RECITALS

WHEREAS, Borealis has submitted a Use Permit and Design Review application File PLP22-0025 for Borealis Battery Storage plant at 3571 Old Adobe Road, APN's 017-130-008 and 017-140-010; and

WHEREAS, Borealis represents that it can provide duly qualified personnel experienced in environmental analysis for the purpose of preparing an Environmental Impact Report (EIR); and

WHEREAS, Borealis acknowledges that (1) except for confidentiality of certain tribal cultural information or those exempt records as set forth in the California Public Records Act, all initial submittals, studies, and edits to all EIR documents submitted to Permit Sonoma will be a matter of public record and all written communications with the County about the project will be included in the administrative record; (2) all tribal consultations will be conducted by the County of Sonoma on a government to government basis with applicant involvement only as directed by Permit Sonoma management; (3) the process of an Applicant Prepared EIR may be more lengthy and expensive than the typical County prepared EIR; (4) payment of the full CEQA review cost is required with an At Cost Deposit (including the contact cost of Permit Sonoma hired consultants conducting peer review of the EIR); and (5) Permit Sonoma may, at its sole discretion, take over the work of the EIR preparation at any time.

WHEREAS, consistent with Permit Sonoma Policy 8-0-7 and CEQA, Permit Sonoma hereby agrees to allow Terra-Gen to provide an Applicant Prepared (EIR) utilizing qualified consulting staff.

WHEREAS, Permit Sonoma will hire its own consulting staff to peer review the applicant's work to ensure that the EIR reflects the independent judgement of the County.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties hereto agree as follows:

AGREEMENT

I. **Recitals**

The Recitals above are true and correct and are incorporated herein.

II. **Purpose**

To establish a cooperative agreement between Permit Sonoma and Borealis to allow the applicant to provide an Applicant Prepared EIR to be peer reviewed by the County and County hired consulting staff with expenses covered by the applicant consistent with and incorporating herein Permit Sonoma Policy 8-0-7 "Applicant Prepare Environmental Review".

IIa. **Definitions**

Applicant – Terra-Gen, LLC

Applicant-Prepared EIR – An Environmental Impact Report prepared under the direction of the applicant.

III. **Rights and Responsibilities of Permit Sonoma**

1. Peer review all environmental work prepared by Terra-Gen and their hired consultants as determined by Permit Sonoma.
2. Ensure that the Applicant Prepared EIR and associated documents reflect the independent judgement of Permit Sonoma. A draft EIR may not be circulated by the County that does not represent the County's independent judgement.
3. Ensure that the Applicant Prepared EIR meets the legal requirements of CEQA.
4. Permit Sonoma may take over the EIR preparation at any time if, in Permit Sonoma's sole discretion, it deems Borealis' work inadequate.

IV. **Responsibilities of Borealis**

1. Prepare an EIR and associated supporting documents which are accurate, objective, credible and legally compliant.
2. Submit all draft documents to the County for peer review in a fully editable form that clearly indicates the draft status and preparer.
3. Submit final documents that are fully remediated in accordance with County requirements.

IV. **Submittal to County**

Nothing in this MOU shall be construed to provide the County with a right to records that have not been submitted to the County.

V. **Term of the Agreement**

This MOU is for a term commencing on Effective **Date**, and ending on **June 30, 2025**. Unless terminated as provided for in Provision VII, this MOU shall automatically renew for successive one-year terms on the same conditions in effect at the conclusion of the ending term.

VI. Hold Harmless

Borealis agrees to defend, indemnify, and hold the County of Sonoma, supervisors, directors, officers, employees, and agents, wholly harmless for, from and against any and all costs (including without limitation reasonable attorney's fees and costs of suit), liabilities, claims, losses, lawsuits, settlements, demands, causes, judgments and expenses arising from or connected with the County's acts or omissions or the performance of this MOU.

VII. Termination

1. Termination Without Cause. Notwithstanding any other provision of this MOU, at any time and without cause, both parties to this MOU have the right, in their sole discretion, to terminate this MOU by giving 5 days written notice to the other party.
2. Termination for Cause. Notwithstanding any other provision of this MOU, should Borealis fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this MOU, Permit Sonoma may immediately terminate this MOU by giving Borealis written notice of such termination, stating the reason for termination.
3. Authority to Terminate. The Board of Supervisors has the authority to terminate this MOU on behalf of Permit Sonoma. In addition, Tennis Wick, Department Head, in consultation with County Counsel, shall have the authority to terminate this MOU on behalf of Permit Sonoma.

VIII. Merger

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

IX. Contact Persons

For County of Sonoma Permit and Resource Management Department:

Attn: Tennis Wick, Director
2550 Ventura Avenue
Santa Rosa, CA 95403
Email: Tennis.Wick@sonoma-county.org
Office: 565-1925

For Borealis:

Attn: Mark Turner
11455 El Camino Real, Suite 160
San Diego, CA 92130
Phone: 916 835-8119
Email: MTurner@terra-gen.com

X. Signatures

The persons executing this MOU on behalf of their respective entities hereby represent and warrant that they have the right, power, legal capacity, and appropriate authority to enter into this MOU on behalf of the entity for which they sign.

BOREALIS BATTERY STORAGE FACILITY BY BOREALIS ESS, LLC:



February 23rd, 2024

Name: Mark Turner

Date

Title: Vice President, Energy Storage Development

COUNTY OF SONOMA PERMIT AND RESOURCE MANAGEMENT:



14 MARCH 2024

Tennis Wick, AICP

Date

Director, Permit and Resource Management

Approved as to Form:



Deputy County Counsel

Date

Approved as to Substance:



28 March 2024

Division Director or Designee

Date