



## **Exclusive Right to Negotiate Agreement**

This AGREEMENT is made and entered into on the date of last signature of this agreement ("Effective Date") by and among RealEnergy, LLC (DEVELOPER), and Napa Sanitation District (NSD).

### **RECITALS**

NSD owns land ("Site A") located in the County of Napa and depicted in the Site Map attached hereto as Exhibit "A." The Site is contiguous to the Waste Water Treatment Plant with existing anaerobic digesters and engine generation.

NSD also owns lands known as the Jameson Canyon Site ("Site B") located in the County of Napa and depicted in the Site Map attached hereto as Exhibit "B." This site is a dedicated site for the exclusive use of NSD.

The DEVELOPER is a private company specializing in the development of on-site and renewable energy power plants and has submitted to NSD a preliminary proposal for the development of a 1-2 MW Utility-Scale Biogas Plant and Renewable Electricity Power Generating Facility (the "Project").

The Project proposed by DEVELOPER is a biogas development using anaerobic digestion of organics, some to be grown as energy crops at the Jameson Canyon land and some to be sourced from the Napa-Vallejo Waste Management Authority, to capture methane to generate renewable electricity and to sequester excess nutrients from the land to be sold as fertilizer. This project will be known as the RealEnergy Biogas Plant - Napa.

The Project is intended to meet the requirements for energy conservation contracts contained in Chapter 3.2 of Division 5 of Title 1 of the California Government Code (commencing with Section 4217.10).

Successful completion of the project is expected to require that the Parties enter into ground leases relating to Sites A and B ("the Ground Leases"), as well as a project agreement relating to the rights and obligations of the Parties in the construction and operation of the Project ("the Project Agreement").

The Parties agree to negotiate exclusively and in good faith to enter into Ground Leases for Site A and Site B and a Project Agreement upon the following terms and conditions:



## **1. Agreement to Negotiate Exclusively: Good Faith Negotiations.**

A. NSD agrees that, during the Negotiation Period (as defined in Section 2 below) and provided that DEVELOPER is not in default of its obligations under this Agreement, NSD shall negotiate exclusively and in good faith with DEVELOPER with respect to the Project Agreement and Ground Leases to be entered into between NSD and DEVELOPER. During the negotiation period, NSD shall not solicit or entertain offers or proposals from other parties concerning similar renewable energy generation projects at Sites A and B. However, in no way does this agreement limit NSD in the research or pursuit of its own solar power generation facility, so long as such facility is owned and operated by NSD and not subject to a power purchase agreement.

B. The Parties agree, in consideration of this Agreement, to negotiate in good faith with each other with respect to the proposed Project Agreement, Ground Leases, and necessary government approvals and to cooperate in the preparation thereof. The Parties shall provide each other with any information regarding the Sites or Project that may be reasonably requested by the other Party that exists at the time of the request.

## **2. Period of Negotiation.**

A. The Parties agree to negotiate in good faith for a period of two (2) years from the Effective Date ("Negotiation Period"). If the Parties have not executed the Ground Leases, Project Agreement, and obtained necessary government approvals by the end of the Negotiation Period, then this Agreement shall automatically terminate, provided, however, that the Parties may, at their sole discretion, mutually agree to extend the term of this Agreement for an additional period of up to one (1) year, subject to approval by the NSD Board of Directors.

B. DEVELOPER agrees to make meaningful progress toward determining the feasibility of the project during the Negotiation Period. Meaningful progress shall include the following:

1. DEVELOPER shall conduct a physical inspection of Site A and Site B within the first 180 days of the Negotiation Period, and
2. DEVELOPER shall request a "Will Serve" letter from NSD for the use of recycled water, identifying the land DEVELOPER intends to lease for agricultural purposes and irrigate with recycled water, pending successful negotiation of the Ground Leases, within the first 180 days of the Negotiation Period, and
3. DEVELOPER shall conduct a hazardous materials investigation of Site A and Site B within the first 180 days of the Negotiation Period, and
4. DEVELOPER shall conduct a soils and/or geotechnical inspection of Site A and Site B within the first 180 days of the Negotiation Period, and
5. DEVELOPER shall conduct a Title search and ALTA survey review of Site A and Site B within the first 180 days of the Negotiation Period, and

6. Within the first 273 days of the Negotiation Period, DEVELOPER shall file a complete planning application with the County of Napa to secure planning entitlements related to both Site A and Site B. Said planning application will require civil engineering and preliminary architectural plans for the project. Compliance with this condition shall be evidenced by DEVELOPER's delivery to NSD of a copy of the complete planning applications at the time of submittal and delivery to NSD of a copy of correspondence from the County indicating the planning applications are complete and the entitlement process has commenced. DEVELOPER shall comply with any and all CEQA requirements that may apply to said planning entitlements. Upon filing of a complete application, DEVELOPER shall thereafter make good faith efforts to obtain said planning entitlements, and
7. DEVELOPER shall pursue project financing during the first 365 days of the Negotiation Period which shall be evidenced by the development of a complete development *pro forma* for the project. This *pro forma* shall be reviewed with a representative of NSD. Also, an offering memorandum, which outlines the amount of financing (debt and equity) desired, shall be prepared and distributed, a copy of which will also be delivered to NSD.

C. Should DEVELOPER fail to take the actions described in Section 2 (B) above, NSD may, at its sole discretion, terminate this Agreement. This Agreement may also be terminated if the Parties agree in writing that a successful consummation of the negotiations is impossible.

D. Upon termination of this Agreement, any interest that DEVELOPER may have hereunder shall cease.

### **3. Compensation for NSD Expenses**

A. The agreements contemplated herein are outside the normal scope of operations for NSD, and as such require professional assistance to negotiate an agreement that protects the interests of NSD ratepayers. DEVELOPER agrees to reimburse NSD for any and all third party financial advice or legal expenses incurred during the Negotiation Period that are related to the negotiation and analysis of the Ground Leases or Project Agreement, provided that said reimbursement shall not exceed twenty thousand dollars (\$20,000). Said twenty thousand dollar reimbursement limit shall not apply to DEVELOPER's obligations pursuant to Section 3.B of this Agreement. The reimbursement shall be made by DEVELOPER to NSD upon termination of this Agreement. In the event that the parties enter into Grounds Leases and Project Agreement, the reimbursement may be credited against the first revenue payment due to NSD by DEVELOPER pursuant to those agreements.

B. DEVELOPER shall bear all costs to be incurred as a result of compliance with the California Environmental Quality Act and the National Environmental Protection Act, including, but not limited to, preparation of an environmental impact report, if required, or any other required studies or documents. DEVELOPER shall also indemnify NSD and bear all costs, expenses, and attorney's fees associated with responding to or

defending against claims that may be filed against itself, or NSD in connection with defending such environmental studies or documents from challenge by third parties.

#### **4. Test and Surveys.**

A. During the Negotiation Period, DEVELOPER shall conduct such tests, surveys, and other analyses as the DEVELOPER reasonably deems necessary to determine the feasibility of designing, constructing, leasing, and financing the Project and shall complete such tests, surveys, and other analyses as promptly as possible within the Negotiation Period.

B. For the purpose of conducting these tests and surveys, NSD shall provide to DEVELOPER, its agents, and representatives, the right to enter onto the Sites and to conduct such tests, surveys, and other procedures desired by DEVELOPER ("Tests"), provided the DEVELOPER requests access at least two (2) business days prior to entry, the entry and tests do not unduly infringe on the operational needs of the wastewater treatment plant, and that the entry is conducted during normal staffed operating hours of the plant. Any such tests or surveys that involve earth disturbance shall first be approved in writing by NSD, and NSD shall comply with any requirements under CEQA that may apply to such tests or surveys. In the event that additional steps are required to be taken to comply with CEQA, it is understood that NSD may require more than two (2) days' notice. Upon the conclusion of all such tests, surveys, and other analyses DEVELOPER shall return the Site to its condition prior to such tests or surveys.

C. DEVELOPER shall provide copies of all studies, test results and surveys to NSD once completed. DEVELOPER shall provide regular monthly written progress reports to NSD.

#### **5. Project Agreement and Ground Lease Negotiations.**

The Project Agreement and Ground Leases shall include, without limitation, all of the following DEVELOPER obligations and restrictions:

(a) (1) Design of the Project, which shall be subject to approval of NSD and compliance with all requirements and regulations of the County of Napa and other public agencies having jurisdiction; (2) Scope of Development; (3) Schedules of Performance; and (4) Other documents regulating the progress and development of the Project. If negotiations result in a Project Agreement, that Project Agreement becomes final only upon approval by the NSD Board of Directors.

(b) Supervision of all improvements comprising the Project, the completion of which shall be: (1) overseen by DEVELOPER upon terms mutually agreeable to the Parties, and (2) free of mechanics' liens and liens other than those respecting the financing of the Project and agreed to by NSD.

(c) Operation and maintenance of the Project, including the right of NSD and its member jurisdictions to purchase the power generated on such terms as the parties may agree.

(d) Reasonable restrictions on transfer or assignment of (1) the Project, (2) DEVELOPER's interest in the Project Agreement and Ground Lease and (3) change in controlling ownership of DEVELOPER.

(e) Provisions in the Ground Lease addressing the (1) term, (2) lease area description, (3) amount and schedule of rents or equivalent payments by DEVELOPER to NSD, and (4) all other essential terms of a Ground Lease.

(f) Reasonable security to assure DEVELOPER's performance under the Project Agreement.

## **6. Development Goals of NSD.**

In negotiating the Ground Leases and Project Agreement, NSD has the following development goals:

(a) Continued use of the Sites consistent with their current uses and all applicable Zoning and General Plan requirements.

(b) Reduction of the NSD's carbon footprint.

(c) Generation of electrical power used by NSD, from clean energy sources.

(d) Creation of jobs.

(e) Generation of new revenues and cost savings for NSD.

(f) Reduction of nutrient loading of the Site B lands.

## **7. Topics for Negotiation.**

The topics for negotiation shall include, among other things: (i) DEVELOPER's right to lease the sites; (ii) method of calculating and paying Ground Lease rents or equivalent payments; (iii) the terms of the proposed Ground Leases including necessary covenants, conditions and restrictions affecting the Site; (iv) air rights use; (v) management of the Project; (vi) the schedule of performance; (vii) availability of the Site to the DEVELOPER; (viii) proposed land uses; (ix) Site layout; (x) preliminary design and architectural concepts and plans; (xi) aesthetic considerations; (xii) the quality and type of construction; (xiii) environmental responsibilities; (xiv) the DEVELOPER's responsibility to obtain environmental clearances, licenses and other entitlements, and project financing; and (xv) any other considerations necessary to fully implement the proposed Project in a timely fashion.

## **8. Broker's Fees.**

The Parties represent and warrant to each other that no broker or finder has been engaged or is in anyway connected with the transactions contemplated by this Agreement. In the event any claim for broker's or finder's fees is made in connection

with the transactions contemplated by this Agreement, the Party upon whose statement, representation or agreement the claim is made shall indemnify, save harmless and defend the other Party from and against such claims.

## **9. Assignment.**

A. DEVELOPER shall not assign any interest in this Agreement without the express written consent of NSD, which consent shall not be unreasonably withheld. As a condition to any proposed assignment of this Agreement, DEVELOPER shall be required to make full disclosure to NSD of the proposed assignee's principals, officers, stockholders, partners, etc., and all other pertinent information concerning the assignee and its associates. NSD shall not assess a fee for its approval of any assignment.

B. Nothing contained herein shall prohibit or in any way limit DEVELOPER's unfettered Choice in the selection and replacement of such consultants and other third parties as DEVELOPER shall designate from time to time to perform services relating to the Project.

## **10. NSD Obligations.**

A. During the Term of this Agreement, NSD shall deliver, at DEVELOPER's expense, within 30 days of receipt of written request thereof, any existing NSD-owned information, studies, reports, site and construction plans or other documents which DEVELOPER may reasonably request to facilitate the Project design. The Parties shall cooperate to ensure timely review and revision of any DEVELOPER documents or plans. NSD shall provide a community support letter sufficient to achieve a final resolution in DEVELOPER's effort to achieve financing through the State of California for bond authority for project financing. In addition, NSD shall provide to DEVELOPER reasonable access to NSD's design staff personnel familiar with the Site and NSD's third party consultants and engineers familiar with the Site for the purpose of aiding DEVELOPER in understanding the physical aspects of the Site and for carbon baselining. DEVELOPER shall bear all costs that may arise associated with making NSD's third party consultants and engineers available to DEVELOPER. Any studies, plans, or other documents made available to DEVELOPER by NSD shall be held in confidence by DEVELOPER, shall not be disclosed to third parties without the consent of NSD, and shall be returned to NSD upon expiration or termination of this agreement.

B. This Agreement is an agreement to enter into a period of exclusive negotiations according to the terms hereof. NSD and DEVELOPER each expressly reserves the right to decline to enter into a Project Agreement and/or Ground Leases in the event the Parties fail to negotiate an agreement to the mutual satisfaction of NSD and DEVELOPER. Except as expressly provided in this Agreement, NSD and DEVELOPER shall have no obligations or duties hereunder and shall have no liability whatsoever in the event the Parties fail to timely execute a Project Agreement and / or Ground Lease, except as expressly identified herein. NSD agrees to cooperate with DEVELOPER in securing the necessary approvals for the Project from governmental agencies having jurisdiction over the Project.



C. DEVELOPER acknowledges and agrees that NSD has not agreed to fund, subsidize or otherwise financially contribute in any manner toward the development of the Project.

D. By its execution of this Agreement, NSD is not committing to or agreeing to undertake: (i) disposition of land to DEVELOPER; or (ii) any other acts or activities requiring the subsequent independent exercise of discretion by NSD. The Parties recognize that one or more of the conditions to DEVELOPER's proposal set forth herein may fail to be met as a result of subsequent studies, reviews and proceedings invoking / the exercise of discretion by NSD or any public agency having regulatory jurisdiction.

### **11. Non-Liability of NSD Officials and Employees.**

Without limiting the provisions set forth herein, no member, official, representative, director, attorney, or employee of NSD shall be personally liable to DEVELOPER or any successor in interest, in the event of any default or breach by NSD of any obligations under the terms of this Agreement, or of any amount which may become due to DEVELOPER or to its successor under the terms of this Agreement.

### **12. Plans, Reports, Studies and Investigation.**

Upon request by NSD, DEVELOPER shall provide NSD, without cost or expense to NSD, copies of all plans, reports, studies, or investigations (collectively, "Plans") prepared by or on behalf of DEVELOPER which the DEVELOPER owns or has the copyrights to with respect to the Site and the Project. All Plans shall be prepared at DEVELOPER's sole cost and expense, and DEVELOPER agrees to indemnify, defend and hold harmless NSD and their representatives, employees, officials, directors, attorneys, successors and assigns (collectively, "Representatives") from any losses, liability, claims, causes of action, injury or expense, including without limitation, reasonable attorneys' fees and costs (collectively, "Loss and Liabilities") arising from or in any way related solely to the cost of preparation of such Plans. Nothing contained herein shall be deemed a representation or warranty by DEVELOPER of the accuracy of any information contained in such Plans.

### **13. DEVELOPER's Responsibilities.**

Without limiting any other provision of this Agreement, during the period of negotiations hereunder, DEVELOPER, at its sole cost and expense, shall prepare and submit the following documents and perform the following acts all in furtherance of the negotiation process:

(a) All documents and other materials that NSD and all agencies having regulatory jurisdiction will require for planning and design approval for the Project. DEVELOPER shall meet with representatives of NSD to review and reach a clear understanding of the planning and design criteria required by these and other agencies.

(b) DEVELOPER shall, no later than 90 days before termination of the Negotiation Period, provide NSD with all documents reasonably necessary to determine the feasibility and details of the project.

**14. Entire Agreement: Attorneys' fees.**

This Agreement represents the entire agreement of the Parties with respect to the matters set forth herein. This Agreement may not be amended except in writing signed by all of the Parties hereunder. If any Party brings an action or files a proceeding in connection with the enforcement of its respective rights or as a consequence of any breach by another Party of its obligations hereunder, then the prevailing Party in such action or proceeding shall be entitled to have its reasonable attorney's fees and costs paid by the losing Party.

**15. Notices.**

All notices required or permitted hereunder shall be delivered in person, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested to such Party at its address shown below, or to any other place designated in writing by such Party.

**NSD (in person):**

Napa Sanitation District  
Mr. Jeff Tucker  
CFO  
935 Hartle Court  
Napa, California 94559

**NSD (by US Mail):**

Napa Sanitation District  
Mr. Jeff Tucker  
CFO  
P.O. Box 2480  
Napa, CA 94558

**DEVELOPER:**

RealEnergy, LLC  
Mr. Kevin Best  
CEO  
1190 Airport Road, Suite 2100  
Napa, California 94558

Any such notice shall be deemed received upon delivery, if delivered personally, the next business day after delivery by a courier, if delivered by courier, and three (3) days after deposit into the United States Mail, if delivered by registered or certified mail.

IN WITNESS WHEREOF, NSD and DEVELOPER have signed this Agreement as of the dates set forth below.

**NAPA SANITATION DISTRICT**

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

Date:\_\_\_\_\_



**APPROVED AS TO FORM:**

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

Attorney for NSD

Date: \_\_\_\_\_

**DEVELOPER:**

**RealEnergy, LLC**

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

Date: \_\_\_\_\_

1820584.1

**Exclusive Right to Negotiate Agreement  
Exhibit A**

**Site "A" Map**





**Exclusive Right to Negotiate Agreement  
Exhibit B**

**Site "B" Map**

