

Generic Energy Builders Community Benefits Agreement¹

This Community Benefits Agreement (this “Agreement”) is made on and shall become effective this [DAY] day of [MONTH], [YEAR] (the “Effective Date”) by and between the [community counterparty]² (“Coalition”) and [DEVELOPER ENTITY] (“Developer”). Coalition and Developer are from time to time hereinafter referred to as the “Parties.”

Purpose³

This Agreement establishes mutually agreed upon and legally binding commitments between the Parties to support the interests of the local community through the progression of the Project, as defined below, while protecting the interests of affected individuals and the community at large, including training and resources for emergency responders, public awareness efforts, easement conditions, current and future transparency regarding the Project and abandoned facilities, and fiscal contributions to the local community. In acknowledgement of their shared values of collaboration, integrity, safety, and accountability, the Parties recognize and affirm the commitments as laid out in this Agreement. This Agreement is in addition to and independent of the obligation to pay taxes and other expenditures required by law or agreed to by the Developer or Project.

Recitals

WHEREAS, the Developer intends to develop, build, own and operate a [300MW utility scale solar generation plant covering 3000 acres in location] (the “Project”) with an intended construction start date of [date] (“Construction Start Date”) and a targeted commercial operation date of [date] (“Commercial Operations Date”),

WHEREAS, the Coalition is [a group of community and government organizations] that represent broadly the interests of the local community that will host the Project; and

WHEREAS, all Parties have an interest in creating a commercially successful renewable energy project that delivers real benefits to the hosting community in terms of job creation, environmental equity, and other economic dividends; and

¹ This CBA is a draft to use as a starting point and is not legal advice. Applicable laws may vary by state and jurisdiction. You should add details that are specific to your community and should ask an attorney to assist in drafting the CBA.

² The community counterparty or “Coalition” must be an individual or legal entity that can enter into a contract. For instance, if there is a coalition of local community leaders and/or organizations that form the community counterparty, they may need to form a 501(c)(3) or another entity so that they have the ability to contract.

³ This section can be tailored to the specific community and project.

WHEREAS, clean renewable energy can power the US and the world, and should deliver authentic benefits to the communities that host [solar] [wind] [battery] facilities; and

[WHEREAS]; and⁴

NOW, THEREFORE, in consideration of the mutual promises and terms and conditions set forth below in this Agreement, the Parties agree as follows:

1. Communication

- a. The Developer shall establish an Office of Emergency Response and Community Engagement, with a point person on staff available to respond to community concerns about impacts of the Project, both urgent and long-term. The Developer shall also create and maintain a website with a description of the Project and updates on construction, permitting, operations, and any unusual events that might impact residents of the community.
- b. The Developer shall hold community meetings on at least a [quarterly] basis to communicate Project updates and potential impacts, as well as to solicit community input regarding issues from the Project that might affect residents. All meetings will be recorded with such recordings made available to the public on the website.
- c. The Developer shall provide free and convenient public access to all documents relevant to the Project that relate to or concern matters of public interest (“Public Documents”). The Public Documents shall be made available at the local public library as well as on the Project website. The information and communications must be easily understood by residents.
- d. On at least an [annual] basis, the Developer shall publish a letter or advertisement in [mutually agreed upon local publications] to communicate the Project’s operating results and the benefits delivered to the community through this Agreement.
- e. Within fourteen (14) days of the Effective Date, the Parties shall (a) make the Agreement publicly available and (b) publicly announce the successful execution of the Agreement and each Party’s support for the Project. The Parties shall coordinate any initial announcements to ensure alignment.

2. Governance / Representatives

- a. The Coalition shall appoint a representative (“Coalition Representative”) that is authorized to represent the Coalition with respect to this Agreement. The Coalition Representative shall be responsible for day-to-day communications and be able to approve decisions on behalf of the Coalition with respect to the Agreement.
- b. The Developer shall appoint a representative (“Developer Representative”) that is authorized to represent both the Developer and the Project with respect to this Agreement. The Developer Representative shall be responsible for day-to-day communications and

⁴ Add more background and context as needed to describe the community, project history, and various actors.

be able to approve decisions on behalf of the Developer with respect to the Agreement.

- c. Both Parties agree to elect their representatives within [xx days] following the Effective Date. Both Parties may change their representatives as needed provided the change is promptly communicated in writing within [five (5) Business Days] of the change.

3. Labor Standards

- a. The Developer shall create shared value through the Project by generating and growing economic opportunities related to the Project's workforce, local supply chain, and communities, including utilizing both union and nonunion labor as well as local contractors, consultants, vendors and suppliers.
- b. The Developer shall commit to paying [prevailing wages]⁵ to all its workers, as well as offer apprenticeship opportunities.
- c. The Project's procurement shall include a preference for local bidders and suppliers. The Developer shall prefer firms, vendors, or individuals whose primary place of business or residence is located in [XXX County] ("Local Preference"). Local Preference includes, but is not limited to, the following:
 - i. All contract opportunities related to construction, operation, goods or services shall be advertised locally.
 - ii. Project labor shall be recruited from [XXX County] to the maximum extent commercially feasible.
 - iii. Developer will draft a local hiring and procurement plan that outlines how it will achieve the local hiring and procurement targets set forth in the Agreement. Developer will present the plan to the Coalition at least 6 months before construction of the Project commences. The Coalition shall have an opportunity to provide feedback and suggest changes.
- d. The Developer shall prepare monthly reports describing local hiring measures and practices. The reports shall be prepared with a level of detail that permits review and assurance of compliance with the Local Preference requirements of this Agreement. Reports shall begin once construction begins and shall be included in the list of Public Documents.

4. Community Investment

- a. Developer shall coordinate with the Coalition [and a non-profit organization, agreed to

⁵ Wage and labor laws—including laws governing prevailing wages—vary by state. Not every state has a prevailing wage law. Consult with a local attorney when drafting the CBA to ensure compliance with applicable state labor laws.

by the Parties,] to establish a community investment vehicle ("the Fund") to support the community projects listed in Exhibit A ("Approved Projects"). The Fund will be managed and administered by a group of trustees (the "Trustees"), who will be selected as follows: one Trustee appointed by Developer; two Trustees appointed by the [government entity]; two Trustees appointed by [Coalition or name of community non-profit or community foundation].

- b. Developer shall establish the Fund with an initial contribution of [\$\$\$ total or \$/MWac]. The initial contribution shall be funded within [90 days] of the Commercial Operations Date. Beginning on the first anniversary of the Commercial Operations Date and continuing through [date], within 90 days of each applicable anniversary, Developer shall make an additional contribution in an amount equal to [\$\$ total or \$/MWac], escalated annually by [x%].
- c. Within ninety (90) days of each annual Commercial Operations Date anniversary, the Trustees shall approve, by a majority vote, an annual budget that allocates the Fund, including all payments and distributions. Payments and distributions from the Fund will be at the sole discretion of the Trustees, but recipients must relate to the Approved Projects and must be located in [county where the Project is located]. The Approved Projects in Exhibit A may be amended as needed, provided four out of five Trustees approve the changes.⁶

5. American Energy Dividend

Beginning on the first anniversary of the Commercial Operations Date and continuing for a period a [XXX] years thereafter, each year, within [ninety (90)] days of the anniversary of the Commercial Operations Date, the Fund will make bonus payments to landowners ("American Energy Dividend) of [\$1,000] per year to each household located within [3 miles] of the Project perimeter. Households that entered into a site lease or easement agreement with the Project and receive income under those contracts shall be ineligible to receive the American Energy Dividend. The Trustees shall create and maintain a list of eligible recipients of the American Energy Dividend and will submit the list annually to the Project no later than [sixty (60)] days before the payment is due.

6. Project Support

- a. The Coalition will not make any public statements or announcements in opposition to the Project and will not interfere in the development of the Project, so long as the Developer is in compliance with this Agreement.
- b. The Coalition agrees to provide the Developer prompt notice of any land agent, contractor, or employee of the Developer that the Coalition believes to be exhibiting undesired behavior associated with the Project, either real or perceived. Notice shall be provided through the Developer's [community feedback mechanism via the community email (email)]. Any notice shall include a description of the event, and sufficient information to allow for identification of the Project representative, such as a name, location of incident, license plate, or landowner's name.

⁶ Clearly establish the decision-making processes related to the Fund. Questions to consider are: Who makes up the "Trustees?" How do they decide who receives distributions from the fund? How many votes do they need to make that decision?

7. Enforcement

- a. **Default:** Failure of any Party to perform or comply with any term of provision of this agreement, if not cured, shall constitute default under this agreement.
- b. **Right to Cure:** If any Party believes that another Party is not complying with its obligations under this Agreement, it shall provide written notice of the alleged non-compliance to the allegedly non-complying Party; offer to meet and confer in a good faith effort to resolve the issue; and, except where delay may cause irreparable injury, provide [sixty (60)] days to cure the alleged non-compliance, commencing at the time of the notice (the “Right-to-Cure Period”). Any notice given pursuant to this provision shall specify the nature of the alleged non-compliance and, where appropriate, the manner in which the alleged non-compliance may be cured.
- c. **Remedies:** In the event that another party is allegedly in default under this Agreement, the party alleging default may choose to pursue one or both of the remedies listed below. The choice of remedy or remedies shall be at the sole discretion of the party alleging default and can only be pursued after the Right-to-Cure Period, except where the alleged default may result in irreparable injury.
 - i. Remedy 1: Mediation. If a Party requests mediation, the mediation shall occur within thirty (30) calendar days of the request, unless the time is extended by agreement of the Parties.
 - ii. Remedy 2: Litigation. The Party shall be entitled to institute legal proceedings to require the specific performance of this Agreement by the other Party.
- d. **Attorney’s Fees:** If a party takes court action against a defaulting party, that party shall be entitled to reasonable costs and attorney’s fees from the defaulting party.

8. Termination

- a. Unless unilaterally terminated, this Agreement shall continue in full force and effect until all the following conditions are satisfied:
 - i. All conditions required as part of this Agreement have been fully and completely satisfied;
 - ii. The permanent cessation of all Developer and Project operations;
 - iii. The release of all Developer performance bonds required for decommissioning and site remediation; or
 - iv. By mutual consent of the Parties to terminate the Agreement.
- b. If default occurs under this Agreement, and the default is not cured within the Right-to-Cure Period, the non- defaulting Party may unilaterally terminate this Agreement.

9. Liability / Indemnification

- a. Developer shall defend, indemnify, and hold harmless the Coalition and its affiliates and their officers, directors, employees, agents, successors, and assigns from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind (including reasonable attorney's fees) arising out of or resulting from bodily injury, death, or damage to real or tangible personal property resulting from Developer's acts or omissions.

10. General Provisions

- a. **Recitals True and Correct.** The Parties agree that the recitals contained herein are true and correct.
- b. **Mutual Consideration.** The Parties' commitments to abide by the terms of the Agreement constitute the required mutual consideration.
- c. **Notices.** Unless specifically provided above, all notices with respect to this Agreement shall be given to the Parties in writing. Notice shall be effective upon actual receipt by the Party to whom it is given or one (1) business day after the notice is sent, whichever is sooner. Notice shall be provided at the following
 - i. **Developer Notice information**
 - 1. Name, Title, Address, Telephone, Email
 - ii. **Coalition Notice information**
 - 1. Name, Title, Address, Telephone, Email

The individual and/or addresses for notices may be changed upon written notice to the other party which is sent in the manner stated herein.

- d. **Binding on Successors / Third Party Beneficiaries.** No Party may assign, transfer, or delegate any or all of its rights or obligations under this Agreement without the prior written consent of the other Party. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and permitted assigns of each of the Parties. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor in interest, heir, administrator, executor, or assign of such party. The Parties do not confer any rights or remedies upon any person other than the Parties to this Agreement and their respective successors and permitted assigns. This Agreement does not create any rights or obligations in any person or entity not a party to this Agreement, except as otherwise expressly provided in this Agreement, and is not intended to create third-party beneficiary rights in any person or entity
- e. **Agreement Lawful and Legally Enforceable.** All Parties to this Agreement understand and agree that it is lawful, enforceable, and binding on all Parties; agree to waive any potential challenges to the enforceability of the Agreement; and agree not to affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Agreement in any judicial action, or other proceeding such as arbitration or mediation.
- f. **Terms of Agreement.** Section and subsection headings herein are included for convenience only and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any section or subsection herein.

- g. **Applicable Law, Jurisdiction, and Venue.** The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of [Project STATE] without regard to its conflict of law provisions. Any actions or proceedings by either of the Parties shall be brought in [Project County].⁷
- h. **Severability; Entire Agreement.** Should a Court declare any term of this Agreement illegal or unenforceable, it shall have no legal effect on the validity of any other term or the balance of this Agreement. This Agreement contains the sole and entire agreement among the Parties with respect to this subject matter and supersedes any and all other prior written or oral agreements among them with respect to such subject matter.
- i. **Right to Public Comments.** Coalition and its members retain the right to make public comments regarding project approvals suggesting changes in aspects of the document and approval terms being considered, so long as such comments are consistent with the letter and spirit of the provisions of this agreement. Coalition agrees that before making such public comments, they shall use its best efforts to address the issues in question with Developer at the regularly scheduled meeting.
- j. **Relationship of Parties.** Neither this Agreement nor any activities undertaken by the Parties pursuant to this Agreement, nor any communications had or to be had among the Parties or with any person or entity relating to the activities contemplated by this Agreement are intended to or will create or establish a partnership, relationship of trust or agency, joint venture or any other business association between or among the Parties. No Party may assert, and each Party expressly waives any rights to assert, under any applicable law or otherwise, that any such association exists based upon this Agreement or any actions taken hereunder by or on behalf of a Party.
- k. **Counterparts.** This Agreement may be executed in multiple original counterparts, each of which shall be deemed an original, and together they shall constitute one and the same. Signature of this Agreement may be effected by facsimile (with confirmation by transmitting machine) and/or transmitted by portable document format ("pdf") file which shall be treated as an original signature, and any such signature, facsimile, pdf file or copy of this signed Agreement shall be construed and treated as the original and shall be binding as if it were the original.
- l. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any prior written or oral agreements, or contemporaneous communications with respect to this subject matter. No subsequent amendment to this Agreement between the Parties shall be binding on any Party unless reduced to writing and signed by an authorized representative of each Party. Preparation of the Agreement has been a joint effort of the Parties, and the resulting documents shall not be construed more severely against one of the Parties than against the others.

⁷ Advocate for the CBA to be governed by the laws of your state and for any legal actions to be pursued in your state, and possibly even in your county, depending on the jurisdiction.

[Signature page]

IN WITNESS WHEREOF, the Parties have executed this Community Benefit Agreement as of [date].

By signing below, the Parties affirm that the individual signing below has the requisite authority to authorize the commitment described herein.

Exhibit A⁸
Approved Projects

The following projects are approved by the Coalition and the Developer as eligible applications of the Fund and align with the community’s priorities in terms of economic and social development.

Project Name	Description	Target Allocation (\$/year)
Job Training	Beginning within <u>six (6)</u> months after the effective date of this agreement, and continuing through fiscal year [20], Fund [shall][may] provide annual funding for job training for Project related occupational titles (or occupations), which also could include pre-apprenticeship programs and other support services.	[\$250,000]
Education Scholarships	The Fund [will] [may] disburse scholarship funds to outstanding young people from the community who wish to study and pursue a career in solar, wind or geothermal energy and related fields.	[\$250,000]
Emergency Response and Environmental Protection	The Fund [shall] [may] support the training and employment of first responder personnel for the town of [name of town]. The Fund will also support the creation of monitoring stations as desired by the community for: -noise levels -EM radiation levels -groundwater quality -general nuisance from	[\$250,000/year for 5 years]

⁸ The projects listed in Exhibit A are indicative and the Coalition should determine its own list that reflect the priorities of the community and the Project specifics.

	transportation, construction and other disruptions of daily life.	
[Community Projects]	The Fund [shall] [may] also disburse monies for specific projects identified by the community through well-publicized public meetings and chosen by the Trustees, such as day care or elder care facilities, ball fields, etc.	[\$500,000]
[Other]	[Description]	[Amount]
Total		[\$1,250,000]