

## NON-DISCLOSURE AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2015 (“Execution Date”) by and between the California Department of Water Resources (“CDWR”), and [insert developer name], a [insert state of incorporation] corporation, with its principal address at [insert address] (“Recipient”), each of which may be referred to herein separately as a “Party” or collectively as the “Parties”.

WHEREAS, CDWR is developing a 9.5 MW solar PV project located in Pearblossom, CA (the “Project”) and has issued a Request for Proposals soliciting bids from interested parties to construct, operate and maintain the Project and sell the energy output to CDWR under a Power Purchase Agreement (the “RFP”).

WHEREAS, CDWR has received from the California Independent System Operator Corporation (“CAISO”) a Cluster 6 Phase II Interconnection Study Report for the interconnection of the Project (the “Phase II Study Results”);

WHEREAS, CDWR is planning to disclose certain Confidential Information, as defined below, to potential bidders, including Recipient, who have expressed a desire to review the Confidential Information in order to construct a response to the RFP,

WHEREAS, it is to the mutual benefit of each Party hereto to enter into this Agreement and provide for the procedure to exchange and protect Confidential Information, as defined below, pursuant to this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **1. Confidential Information**

(a) For purposes of this Agreement, the term “Confidential Information” means any data or information that CDWR furnishes to the Recipient in connection with or pertaining to the Phase II Study Results and/or the Project and that is clearly marked “Confidential” (or promptly identified in writing as such when furnished in tangible form), whether in tangible or intangible form, whenever and however disclosed. Confidential Information also includes information generated by Recipient or its Representatives, as defined below that contains Confidential Information or is derived from such Confidential Information. Confidential Information need not be novel, unique, patentable, copyrightable or constitute intellectual property in order to be designated Confidential Information.

(b) For the purposes of this Agreement “Confidential Information” does not include information that:

(i) becomes or has been generally available to the public other than as a result of a disclosure by Recipient or its Representatives in violation of this Agreement;

(ii) Recipient can demonstrate was at the time of the disclosure by CDWR already in Recipient's possession and was not acquired, directly or indirectly, from CDWR on a confidential basis;

(iii) is independently developed by Recipient without use of or reference to the Confidential Information;

(iv) becomes rightfully known to the Recipient from a third-party source, provided Recipient is not aware (after due inquiry) that such source disclosed the information in breach of a confidentiality agreement; or

(v) is approved for disclosure or use in writing by CDWR.

## **2. Nondisclosure /Representatives**

(a) Recipient agrees it will maintain the Confidential Information in strict confidence by using a reasonable standard of care, but not less than the degree of care used by it in safeguarding its own confidential information, and that the Confidential Information shall not, without CDWR's prior written consent, be disclosed by Recipient or by its affiliates, or their respective officers, directors, partners, employees, agents, consultants, attorneys, contractors, or representatives (collectively, "Representatives"), except as specifically provided herein, in any manner whatsoever, in whole or in part.

(b) Recipient agrees that the Confidential Information shall not be used by Recipient or by its Representatives other than solely in connection with the development and/or preparation of a bid submitted in response to the RFP.

(c) Recipient may release or disclose Confidential Information to those of its Representatives who need to know the Confidential Information for the sole purpose of assisting Recipient in its development and/preparation of a bid submitted in response to the RFP; provided that Recipient shall inform those Representatives of this Agreement and secure their agreement to abide in all material respects by its terms. Except as specifically provided herein, Recipient shall not release or disclose Confidential Information to any person for any purpose.

(d) To the extent permitted by law, Recipient shall be fully liable for any breach of this Agreement by its Representatives as though committed by Recipient itself.

## **3. Return/Destruction of Information**

Unless extended in writing by CDWR, Recipient shall, upon the issuance of the Notice of Award or, if earlier, July, 2015, at its own expense, either promptly return to CDWR all originals and copies of the writings in its possession (or in its Representatives' possession) that contain Confidential Information or, by written notice, certify to CDWR that such writings have been destroyed. In addition, unless extended in writing by CDWR, Recipient shall destroy (and cause its Representatives to destroy) internal documents containing Confidential Information upon the issuance of the Notice of Award or, if earlier, July, 2015.

Recipient and its Representatives shall be deemed to have destroyed any Confidential Information that is provided or maintained in electronic form if such information is deleted from local hard drives, so long as no attempt is made to recover such information from servers or backup sources, and so long as information is also deleted from other electronic or storage devices.

#### **4. Required Disclosure**

Notwithstanding anything in this Agreement to the contrary, Recipient may disclose Confidential Information pursuant to any law or regulation or governmental, judicial, or administrative order (by oral questions, interrogatories, requests for information or documents subpoena, civil investigative demand or similar process) (“Required Disclosure”). Prior to any such disclosure of Confidential Information under this Section, the Recipient must promptly notify CDWR in writing of such demand so that CDWR, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information.

#### **5. Notice of Breach**

Recipient shall notify CDWR immediately upon discovery of any unauthorized use or disclosure of Confidential Information by Recipient or its Representatives, or any other breach of this Agreement by Recipient or its Representatives, and will cooperate with efforts by CDWR to help CDWR regain possession of Confidential Information and prevent its further unauthorized use.

#### **6. No License Rights**

This Agreement and any Confidential Information used or disclosed hereunder shall not be construed as granting, expressly or by implication, Recipient any rights, title or interest, by license or otherwise, to such Confidential Information or to any invention, patent or patent application, or other intellectual property right, now or hereafter owned or controlled by another person. Title to the Confidential Information shall remain solely in CDWR.

#### **7. No Representation or Warranties**

NO WARRANTIES ARE MADE BY ANY PARTY UNDER THIS AGREEMENT. Confidential Information exchanged under this Agreement shall carry no warranties or representations of any kind, either expressed or implied. Recipient shall not rely on the Confidential Information for any purpose other than to make its own evaluation thereof. CDWR and its Representatives shall have no liability to Recipient or any of its Representatives resulting from any use of the Confidential Information.

#### **8. Remedies**

The Parties acknowledge and agree that, in the event of any breach of this Agreement, CDWR may be irreparably and immediately harmed and monetary damages may not be adequate

to make CDWR whole. Accordingly, it is agreed that, in addition to any other remedy to which it may be entitled in law or equity, CDWR shall be entitled to injunctive relief (without the posting of any bond and without proof of actual damages) with respect to any actual or threatened violation of this Agreement and/or to compel specific performance of this Agreement. Recipient expressly agrees that it shall bear all of the costs and expenses, including attorneys' fees and costs, that CDWR may incur in enforcing the provisions of this Agreement. **IN NO EVENT SHALL CDWR BE LIABLE TO ANY OTHER PARTY FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT TO THIS AGREEMENT OR FOR ANY FAILURE OR PERFORMANCE UNDER THIS AGREEMENT HOWEVER CAUSED.**

#### **9. Term and Provisions Surviving Termination**

The term of this Agreement shall be from the Execution Date until December 31, 2016, subject to extension by mutual agreement of the Parties. Notwithstanding the foregoing, to the extent the Confidential Information is not returned or destroyed prior to the termination date, the Parties' duty to hold in confidence Confidential Information that was disclosed during the term shall remain in effect until such Confidential Information is returned or destroyed.

#### **10. Miscellaneous**

(a) Any waiver of any provision of this Agreement, or a waiver of a breach hereof, must be in writing and signed by the Parties to be effective. Any waiver of a breach of this Agreement, whether express or implied, shall not constitute a waiver of a subsequent breach hereof.

(b) This Agreement constitutes the entire understanding between the Parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the Parties, with respect to the subject matter hereof. This Agreement can only be modified by a written agreement signed by the Parties.

(c) Any conflict between the language or stamp on any Confidential Information, or any provision of a commercial transaction entered into by and among the Parties in furtherance of or related to the Study Results and the RFP regarding Confidential Information provided during the term of this Agreement, on the one hand, and this Agreement, on the other hand, shall be resolved in favor of the language of this Agreement.

(d) This Agreement is for the benefit of each Party. This Agreement shall be litigated in the courts in the State of California and will be governed by and construed in accordance with the laws of the state of California without regard to such state's conflicts of law rules.

(e) This Agreement shall be binding on the Parties, their successors, and assigns. No Party may assign any of its rights or delegate any of its obligations under this Agreement, except with the prior written consent of the other Parties.

(f) If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such unenforceability or invalidity shall not affect the enforceability or validity or any other provision of this Agreement.

(g) Each person signing below represents and warrants that he or she has been duly authorized by the Party for whom he or she signs to execute this Agreement on behalf of that Party.

(h) This Agreement may be executed in counterparts, each of which shall be deemed an original. This Agreement may be executed and delivered by facsimile or electronic transmission and the Parties agree that such facsimile or electronic (pdf) execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each Party may use such facsimile or electronic signatures as evidence of the execution and delivery of this Agreement by the Parties to the same extent that an original signature could be used.

## **11. Notice**

Any notice hereunder shall be made in writing, unless otherwise agreed by the Parties, and shall be delivered in person or sent by certified mail, postage prepaid, by overnight delivery, by a nationally recognized overnight delivery service, or by electronic mail or facsimile with an original sent immediately thereafter by postage prepaid mail, addressed as follows:

To Recipient:

To CDWR:

All notices shall be effective upon delivery if delivered personally, by overnight delivery, or by electronic mail or facsimile transmission. If delivered by mail, such notices shall be effective three days following deposit in the U.S. mail, postage prepaid.

Any Party may periodically change any address to which notice is to be given it by providing written notice of such change to the other Parties.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed and delivered by its proper and duly authorized agent as of the date first written above.

CALIFORNIA DEPARTMENT OF  
WATER RESOURCES

[insert developer name]

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

[Signature page to Non-Disclosure Agreement]