

**CONFIDENTIALITY AND
NON-DISCLOSURE AGREEMENT**

This Confidentiality and Non-Disclosure Agreement (“Agreement”) is entered into as of _____, 20__ (“Effective Date”), by and between Sacramento Municipal Utility District, a political subdivision of the State of California, (“SMUD”) and

(“DEVELOPER”), referred to collectively as "Parties" and individually as "Party."

RECITALS

- A. The Parties desire to evaluate the possibility of renewable purchase and integration agreements for the following renewable energy project:

(“Proposed Transaction”); and

- B. The Parties intend to exchange certain proprietary or confidential information for the purpose of exploring the Proposed Transaction; and
- C. The Parties intend to keep the content of their discussions confidential; and
- D. The Parties are willing to provide such information for such purpose in accordance with the terms hereof:

NOW, THEREFORE, SMUD and DEVELOPER do hereby mutually agree as follows:

1. Definitions.

- a. "Confidential Information" shall mean all confidential, proprietary, and trade secret information, ideas and materials of or about a Party or its affiliates, employees or customers that is furnished by a Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) after the Effective Date, and labeled “confidential” or “proprietary” (or, if presented orally, is stated at the time to be confidential or is identified as being “confidential” or “proprietary” in a letter sent to the Receiving Party no later than five (5) days after the disclosure). If labeled or identified as such, Confidential Information includes, without limitation: (i) information, ideas or materials of a technical nature such as research and development results, designs and specifications and other materials and concepts relating to the products and processes of the Disclosing Party and its affiliates, (ii) information, ideas or materials of a business nature such as non-public financial information; information regarding costs, profits, products, marketing, customers, suppliers, employees, and salaries; marketing and sale plans and forecasts; business and financial plans and forecasts; and power project development plans

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and opportunities; and (iii) the content of discussions concerning the Proposed Transaction, to the extent identified as confidential in the manner as described above.

- b. “Person” shall be broadly interpreted to include, without limitation, any corporation, company, partnership, other entity or individual.
 - c. “Representatives” shall mean as to any Party, its directors, officers, employees, agents and advisors (including, without limitation, financial advisors, attorneys and accountants).
2. Confidentiality and Non-Use. In consideration of each Party's providing Confidential Information, the Parties agree as follows:
- a. The Receiving Party shall hold confidential and not disclose to any Person, without the prior written consent of the Disclosing Party, all Confidential Information; provided, however, that the Receiving Party may disclose such Confidential Information to its Representatives who are actively and directly participating in its evaluation of the Proposed Transaction or who otherwise need to know the Confidential Information for the purpose of evaluating the Proposed Transaction;
 - b. The Receiving Party shall cause all its Representatives to observe the terms of this Agreement and shall be responsible for any breach of the terms of this Agreement by it or its Representatives; and
 - c. The Receiving Party shall return or destroy all Confidential Information (including all copies thereof) within 30 days of receipt of a written request therefore.
3. Exceptions to the Confidentiality and Non-Use Obligations. The obligations imposed by Section 2 hereof shall not apply, or shall cease to apply, to any Confidential Information if or when, but only to the extent that, such Confidential Information:
- a. was known to the Receiving Party prior to the receipt of the Confidential Information; or
 - b. was, or becomes through no breach of the Receiving Party's obligations hereunder, known to the public; or
 - c. becomes known to the Receiving Party from sources other than the Disclosing Party under circumstances not involving any breach of any confidentiality obligation; or
 - d. is independently developed by the Receiving Party, as evidenced by the written records thereof; or

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- e. is required to be disclosed by law, including without limitation, the California Public Records Act, Brown Act or any other California or federal statute, court rule, or legal authority.
4. Disclosures Required by Law. In the event that the Receiving Party or any of its Representatives becomes subject to a disclosure under the Public Records Act or other legal authority, the Receiving Party agrees to give the Disclosing Party earliest possible notice of the existence, terms, and circumstances surrounding such request so that the Disclosing Party may, in its sole judgment either:
 - a. seek an appropriate protective order or other remedy at its sole cost and expense; or
 - b. consult with the Receiving Party concerning steps to resist or narrow the scope of such request.
5. Non-Disclosure. Unless otherwise required by law or applicable legal process, neither Party shall in any way or in any form disclose, publicize or advertise in any manner any Confidential Information or any information about the Proposed Transaction, or the terms or conditions or any other facts relating thereto, including, without limitation, the content of the discussions or negotiations related to the Proposed Transaction, without the prior written consent of the other Party.
6. No Further Agreements Hereunder. Neither SMUD nor DEVELOPER shall be under any obligation to enter into any further agreements with the other signatory hereto as a result of this Agreement. The Parties shall be free at all times to hold negotiations or enter into agreements with any other Persons whatsoever in addition to or in lieu of the discussions hereunder and any such activities shall not be a breach of this Agreement or any obligations owed to the other Party hereunder. Each Party hereto reserves the right, in its sole discretion, to decline to make, to retract or to reject at any time any proposal which has not yet become legally binding by execution of a written agreement between the Parties with respect thereto or with respect to any further agreements or business arrangements with the other Party hereto, and to terminate all further discussions and negotiations.
7. No Representations and Warranties. Each of the Parties make no representation or warranties, express or implied, of any kind to the other Party with respect to the Confidential Information, including without limitation with respect to the accuracy or completeness thereof. Any representations or warranties shall be made thereby, if at all, only in definitive written agreements that may be entered into hereafter.
8. Termination; Duration of Obligations. Unless sooner terminated by mutual written Agreement of the Parties hereto, this Agreement and the obligations hereunder shall terminate two years from the Effective Date.

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9. Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity of enforceability of the other provisions hereof.
10. Entire Agreement. This Agreement represents the entire understanding and agreement of the Parties and supersedes all prior communications, agreements and understandings between the Parties relating to the subject matter hereof.
11. Waivers; Amendments; Assignment. This Agreement may not be modified, amended or waived except by a written instrument duly executed by both Parties. No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. This Agreement may not be assigned by either Party without the prior written consent of the other and shall be binding on, and inure to the benefit of, the respective successors of the Parties thereto.
12. Governing Law; Disputes. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns and shall be construed in accordance with the laws of the State of California, without giving effect to its principles or rules regarding conflicts of laws. The state and federal courts situated in the State of California shall have exclusive jurisdiction to resolve any disputes with respect to this Agreement with each Party irrevocably consenting to the jurisdiction thereof for any actions, suits, or proceedings arising out of or relating to this Agreement.
13. Remedies. Without prejudice to the rights and remedies otherwise available to either Party, each Party shall be entitled to equitable relief by way of injunction or otherwise if the Receiving Party or any of its Representatives breach or threaten to breach any of the provisions of this Agreement and the Receiving Party shall not plead in defense thereto that there would be an adequate remedy at law.
14. Execution; Facsimile. This Agreement may be executed by facsimile and in counterparts, and each counterpart shall for all purposes be an original, and all such counterparts shall together constitute one and the same Agreement.

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IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its respective, fully authorized representatives as of the date first written above.

SACRAMENTO MUNICIPAL
UTILITY DISTRICT

DEVELOPER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____