

PROJECT DEVELOPMENT and NON-DISCLOSURE AGREEMENT

This Project Development Agreement (“**Agreement**”) is made and entered into as of _____, (the “Effective Date”) by and between COUNTY SANITATION DISTRICT NO. 20 OF LOS ANGELES COUNTY, a county sanitation district organized and operating pursuant to the County Sanitation District Act, California Health and Safety Code Section 7400, et seq. (“**District**”), and PACIFICO POWER, LLC, a Delaware LLC (“**Pacifico**”) for the development of an energy systems solution (the “**System**”) at the Palmdale Water Reclamation Plant in Palmdale, California (the “**Project Site**”). The District and Pacifico are referred to in this Agreement individually as a “**Party**” or jointly as “**Parties**”.

In consideration of the proposal that Pacifico submitted to the District in response to a Request for Proposal on August 26, 2021, the District hereby authorizes Pacifico to continue development of a solar and battery energy storage project, including engineering, design, analysis, utility interconnection application and related studies, assessment of Project Site conditions and applicability of available tax & other potential incentives (together without limitation, the “**Work**”).

Each Party hereto agrees to cooperate in good faith to complete the negotiations and execution of the System sales agreement for the Facility (the “**Contract**”) as soon as reasonably practicable. However, execution of this Agreement shall in no way obligate either Party hereto to ultimately execute the Contract and each Party hereto shall enter into the Contract in its sole discretion.

District agrees not to directly or indirectly engage, negotiate, and/or enter into any agreement with any third party for the provision of services similar to the System or the Contract for the Project Site for a period of two hundred and seventy (270) days from the execution of this Agreement (the “**Exclusivity Period**”). At such time, an extension may be negotiated between District and Pacifico for an agreed upon period if deemed necessary.

Notwithstanding the foregoing, in the event District elects to terminate this Agreement, or not proceed with execution of the Contract, District agrees to reimburse Pacifico for its costs including but not limited to third-party expenses incurred in performing the Work, which in no case will exceed **\$30,000** in total.

The Parties hereto shall be bound by the terms of the mutual Non-Disclosure Agreement (“**NDA**”), attached hereto as Attachment A, in connection with their activities, discussions, disclosures and communications regarding the System, the Project Site, the Work, and the Contract. In addition, this Agreement, including its terms and the existence thereof, shall be deemed to be confidential information that is protected pursuant to the NDA. The expiration or termination of this Agreement shall not affect the Parties’ obligations under the NDA, which obligations shall continue to be governed by the terms thereof.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California, without reference to its conflicts of laws principles that would cause the application of the laws of another jurisdiction.

This Agreement constitutes the entire agreement between the Parties hereto and supersedes all previous discussions, negotiations, understandings or agreements, written or oral, express or implied, between District and Pacifico or any of their respective affiliates with respect to the subject matter hereof, with the exception of the NDA.

All notices in connection with this Agreement shall be made to the following individuals:

If to District:

William Chen
Supervising Engineer, Energy Recovery
Email: energyrecovery-supervisor@lacsdsd.org

If to Pacifico:

Kevin Pratt
President
Email: kevinp@pacifico-power.com

No purported amendment to, or waiver of, any term of this Agreement shall be binding upon a Party hereto, or have any other force or effect in any respect, unless the same is in writing and signed by the Party hereto to be charged. This Agreement shall be binding upon, and inure solely to the benefit of, the Parties hereto and their successors and permitted assigns. Nothing herein, express or implied, is intended to, or shall be deemed to, confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever. This Agreement may be executed in multiple counterparts, each of which, when executed and delivered, shall be deemed to constitute an original but all of which, when taken together, shall constitute one and the same instrument. The Parties hereto further agree that delivery of copies of executed signature pages in .pdf format shall be deemed to constitute execution and delivery of this Agreement.


Except for District's obligation to pay for the Work performed described above and the Exclusivity Period and the Parties' obligations under the NDA, this Agreement is non-binding.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives, effective as of the date first set forth above:

PACIFICO POWER, LLC

COUNTY SANITATION DISTRICT NO. 20 OF
LOS ANGELES COUNTY

By  KEVIN PRATT
Title PRESIDENT

By _____
Chairperson, Board of Directors

ATTEST:

By _____
Secretary to the Board

APPROVED AS TO FORM:
LEWIS, BRISBOIS, BISGAARD & SMITH
LLP

By _____
District Counsel

Attachment A

NON-DISCLOSURE AGREEMENT

This mutual Non-Disclosure Agreement (this “**NDA**”) is made and entered into as of _____ (the “**Effective Date**”) by and between COUNTY SANITATION DISTRICT NO. 20 OF LOS ANGELES COUNTY, county sanitation district organized and operating pursuant to the County Sanitation District Act, California Health and Safety Code Section 7400, et seq. (“**District**”), and PACIFICO POWER, LLC, a Delaware LLC (“**Pacifico**”).

WITNESSETH:

For and in consideration of the disclosure of certain information by the parties to each other for the purpose of pursuit of commercial and industrial solar energy power purchase agreement projects (the “**Purpose**”), Pacifico and District (individually, a “**Party**” and, collectively, the “**Parties**”) hereby, on behalf of their respective officers, directors, employees, agents, representatives, and affiliates, agree as follows:

1. Each Party agrees that all information disclosed to it (the “**Receiving Party**”) by the disclosing Party (the “**Disclosing Party**”), its agents, employees or representatives shall be considered confidential (all such information is referred to as the “**Confidential Information**”), and as a condition to such disclosure, the Confidential Information shall be held in strict confidence and shall not be disclosed to any third party except with the prior express written consent of the Disclosing Party and in accordance with the terms of this NDA. The Receiving Party shall disclose such Confidential Information only to those of its employees, attorneys, accountants, advisors, financing partners, potential financing sources, agents and other persons participating in the applicable project in a financing, development, contracting, engineering, or consulting capacity (collectively, “**Representatives**”) as is strictly necessary for the purposes of this NDA, and shall guarantee the confidentiality of its Representatives. Each Party agrees, for itself and its Representatives, to use such Confidential Information exclusively and solely for the purposes provided in this NDA. Further, the Receiving Party will not (i) reproduce, distribute in any form or make copies of any Confidential Information except as absolutely necessary to provide such information to persons authorized to receive Confidential Information, as above described, or (ii) disassemble, decompile or reverse engineer the Confidential Information in any way. The Confidential Information shall remain the property of the Disclosing Party.
2. The Receiving Party shall protect the disclosed Confidential Information by using the same degree of care, but not less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the Receiving Party uses to protect its own Confidential Information of a like nature.
3. Upon the request of the Disclosing Party, the termination of the discussions between the Parties regarding the Purpose or other termination of the reason for the disclosure of the Confidential Information, the Receiving Party shall immediately return to the Disclosing Party, or destroy, all Confidential Information including without limitation, all papers, records, documents, summaries, and the like of every kind, and any and all copies and reproductions thereto, provided to the Receiving Party pursuant to this NDA. In the event of such request or termination, all documents, memoranda, notes and other Confidential Information, including electronic copies such as email or computer files, whether machine or user readable, prepared by the Receiving Party or the Receiving Party’s Representatives based on the Confidential Information shall be promptly destroyed, or if such destruction is prohibited by law, then promptly delivered to the Disclosing Party (it being agreed that in respect of Confidential Information held in electronic form the Receiving Party shall only be required to take reasonable steps to expunge such Confidential Information from any computer, word

processor or other device containing it, it being recognized that there are material practical limitations in identifying and destroying all such electronic information). Notwithstanding the return or destruction of any copies of the Confidential Information, the Receiving Party and the Receiving Party's Representatives will continue to be bound by their obligations of confidentiality and other obligations hereunder.

4. It is recognized and agreed that irreparable damage will result from any breach of this NDA. Therefore, in addition to monetary damages, the Disclosing Party shall have the remedy of a restraining order or other appropriate equitable relief to enforce this NDA.
5. Any waiver by a Party of a breach of any term or condition of this NDA by the other shall not be considered as a waiver of any subsequent breach of the same or any other term or condition hereof.
6. The obligations of confidentiality herein shall survive for a period of two (2) years following the Effective Date of this NDA.
7. Notwithstanding the provisions above, the District is subject to the provisions of the California Public Records Act, Government Code section 6250, et seq. ("PRA"). In the event that the District is compelled, by deposition, interrogatory, subpoena, request under the PRA, civil investigative demand, or other governmental or regulatory requirement, to disclose information that Pacifico considers to be Confidential Information, the District shall furnish Pacifico with prompt written notice as described below. Nothing in this NDA shall be construed to prevent the Receiving Party from making any disclosure of any Confidential Information if required to do so by any applicable law or regulation. In the event the Receiving Party becomes legally compelled to disclose Confidential Information disclosed to it by the Disclosing Party, the Receiving Party will promptly, but in any event within three (3) business days of becoming aware of such compulsion, notify the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this NDA. In the event such protective order or other remedy is not obtained, or the Disclosing Party waives compliance with the provisions of this NDA, the Receiving Party shall furnish only that portion of the Confidential Information which the Receiving Party is advised by legal counsel is legally required and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information. The Disclosing Party shall pay for all attorney's fees, legal costs, or sanctions awarded to the third party, and shall hold the Receiving Party, its directors, officers, and agents harmless from the same.
8. Confidential Information shall not include:
 - (a) information which at the time of disclosure is in the public domain;
 - (b) information which, after disclosure, is published or otherwise becomes part of the public domain through no fault of the Receiving Party (but only after, and only to the extent that, it is published or otherwise becomes part of the public domain);
 - (c) information which the Receiving Party can show by clear and convincing evidence was in the Receiving Party's possession at the time of disclosure and was not acquired, directly or indirectly, or from a third party under an obligation of confidence or information the Receiving Party can show by clear and convincing evidence was independently developed by the Receiving Party; and
 - (d) information which the Receiving Party can show by clear and convincing evidence was received by the Receiving Party after the time of disclosure hereunder from a third party who did not require to hold it in confidence and who did not acquire it, directly or indirectly, from the Disclosing Party under an obligation of confidence.

9. For purposes of this NDA, any reference to the Parties shall also be deemed to include their respective parents, subsidiaries and affiliated companies.
10. Neither Party shall disclose the terms of the negotiations between the Disclosing Party and the Receiving Party regarding the Purpose as stated above, except that any final contract or agreement awarded by the District to Pacifico will be a public document. Each Party acknowledges and agrees that nothing in this NDA constitutes an obligation to enter into any transaction or to accept or consider any proposal or offer made in relation to any transaction and that either Party shall be entitled to terminate its discussions or negotiations with respect to a possible transaction at any time.
11. The terms of this NDA may be modified or waived only by a separate writing executed by each Party expressly so modifying or waiving such terms.
12. This NDA shall be governed by and construed in accordance with the laws of the State of California, without reference to its choice of law principles that would cause the application of the laws of another jurisdiction.
13. This NDA may not be assigned without the express prior written consent of the Disclosing Party, and shall be binding upon the Receiving Party's heirs, successors and permitted assignees. Any attempted assignment in contravention of this NDA shall be void and unenforceable.
14. Should any provision of this NDA be found unenforceable, such provision shall be severed and the remainder of this NDA shall still be in effect.