**CALIFORNIA COMMUNITY POWER**

**NON-DISCLOSURE AGREEMENT**

 THIS nON-DISCLOSURE Agreement (this “**Agreement**”) is entered into as of \_\_\_\_\_\_\_, 202\_ (the “**Effective Date**”) between and among California Community Power, a California joint powers authority (“**CC Power**”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a [state and type of legal formation] (“**Seller**”).

 The parties to this Agreement intend to enter into discussions regarding a potential transaction(s) between CC Power and Seller for purchase and sale, respectively, of energy, capacity, and/or other energy market products or services (the “**Transaction(s)**”). In connection with the Transaction(s), the parties may receive certain Confidential Information (as defined below) from each other, the confidentiality of which the parties desire to protect. For purposes of this Agreement, the party making the disclosure of Confidential Information is referred to as “**Disclosing Party**” and the party receiving such Confidential Information is referred to as “**Receiving Party**.” For purposes of this Agreement, “**Affiliate**” means, as to either party, any person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that party. Affiliate also includes each member of CC Power. For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. **Confidential Information**.
	1. Defined.“**Confidential Information**” means all proprietary, confidential or otherwise nonpublic information of or relating to a party or its Affiliates, in any form whether written, electronic, visual or oral, and all notes, analyses, compilations, studies, reports, interpretations, or other material prepared by Receiving Party or its employees or agents which contain or reflect or are based upon, in whole or in part, the foregoing, that is designated by the Disclosing Party as “confidential.” In order to designate information as confidential, the Disclosing Party must clearly label and identify the specific portion of the material designated with the word “Confidential”.
	2. Exclusions. Confidential Information does not include information (i) that is or becomes generally known to the public other than as a result of disclosure by Receiving Party or any of its Representatives (as defined below) in violation of the terms of this Agreement; (ii) that is in the possession of Receiving Party at the time of disclosure by Disclosing Party, as reasonably evidenced by a prior or contemporaneous writing and other than as a result of Receiving Party’s breach of any legal obligation; (iii) that becomes known to Receiving Party through disclosure by sources other than Disclosing Party which, to the knowledge of Receiving Party, are not subject to any obligation of confidentiality or other duty not to disclose such information; or (iv) that is independently developed by Receiving Party without reference to the Confidential Information and through persons who have not had, either directly or indirectly, access to or knowledge of such Confidential Information, as reasonably evidenced in writing by Receiving Party.
2. **Obligation of Confidentiality**.Receiving Party will not use or disclose any Confidential Information of Disclosing Party except as reasonably necessary for purposes of evaluating, negotiating and implementing, the Transaction(s), except that Receiving Party may disclose such Confidential Information where it is under a legal or regulatory obligation to do so. Subject to the foregoing, without the prior written consent of Disclosing Party, Receiving Party will not disclose any portion of the Confidential Information to any person, other than to employees, directors, officers, consultants, Affiliates and their Representatives (as defined below), advisors, attorneys, auditors, lenders, financial investors or agents of Receiving Party who have a need to know in connection with the Transaction(s) or otherwise (collectively, to the extent Receiving Party discloses, or provides access to, Confidential Information to any of the foregoing, its “**Representatives**”), provided such Representatives are informed of this Agreement and agree to be bound by the terms hereof or are otherwise bound by obligations of confidentiality with regard to the Confidential Information which are at least as protective as the confidentiality obligations set forth herein. Receiving Party shall be responsible for any breach of this Agreement by any of its Representatives.
3. To the extent that any Confidential Information that is exchanged between Disclosing Party and Receiving Party concerns pending or threatened legal proceedings, governmental investigations, or regulatory proceedings, the parties understand and agree that they have a commonality of interest with respect to such material, and it is their intention and mutual understanding that such material shall be subject to confidentiality or protection under attorney-client privilege, work product doctrine, or other applicable privilege. All Confidential Information provided by the Disclosing Party that is entitled to protection under any such privilege or doctrine shall remain entitled to protection under such privileges, doctrines, this Agreement, and the joint defense doctrine and the sharing of such material shall not constitute a waiver of such privilege or doctrine. Nothing in this Agreement obligates any party to disclose any material subject to attorney-client privilege, work product doctrine, or any other applicable privilege.
4. **Compliance with the Law**. If Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of Disclosing Party, Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. In the event such protective order or other remedy is not timely obtained and communicated to Receiving Party, Receiving Party or its Representatives shall only disclose such portion of the Confidential Information which is legally required to be disclosed to the person seeking disclosure, and shall require to the extent possible that any Confidential Information so disclosed will be accorded confidential treatment. Each party hereto acknowledges and agrees that information and documentation provided in connection with the Transaction(s) may be subject to the California Public Records Act (Government Code Section 7920.000 et seq.), and that CC Power shall exercise sole discretion regarding its obligation to produce such public records requested by a third party.
5. **Return of Materials**. Upon termination of the Agreement or upon the earlier written request of Disclosing Party, Receiving Party shall, and shall cause its Representatives to, promptly upon the written request of Disclosing Party, deliver to Disclosing Party all documents, files or other materials furnished by or on behalf of Disclosing Party to Receiving Party constituting Confidential Information, without retaining any copies of them. Receiving Party shall then and shall cause its Affiliates and relevant Representatives to destroy all other documents, files or materials constituting Confidential Information of Disclosing Party (including all electronic records containing or describing any Confidential Information) and shall confirm in writing to Disclosing Party that all Confidential Information and records have been returned or destroyed. The obligations of Receiving Party contained in this Agreement shall survive any return or destruction of documents, files or other materials containing Confidential Information; provided, however, an archival copy of the Confidential Information and copies, notes, summaries, or extracts may be retained (and subsequently destroyed) in the files of Receiving Party in accordance with its record retention policies and procedures and legal requirements, so long as such policy does not conflict with the terms of protection of Receiving Party for the periods described in this Agreement. Any Confidential Information so retained shall remain subject to the terms of this Agreement and shall not be accessed, used or reproduced by the Receiving Party and its Representatives for any purpose not expressly permitted under this Agreement or otherwise required by law.
6. **Governing Law and Jurisdiction**. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without regard to conflicts of laws. The parties hereby consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Sacramento County for the purposes of adjudicating any matter arising from or in connection with this Agreement. Neither party shall be liable to the other for special, indirect, consequential or punitive damages.
7. **No Obligation**. Until a definitive written agreement is executed and delivered by the parties, no agreement providing for any Transaction shall be deemed to exist, and neither party is under any legal obligation to enter into any Transaction because of this Agreement.
8. **No Representation, Warranty or Obligation**. Disclosing Party makes no representation or warranty, express or implied, as to the Confidential Information, including without limitation to any warranty against infringement, accuracy or completeness, and Disclosing Party shall have no liability based upon the Confidential Information; provided, that Disclosing Party represents it has the right to disclose the Confidential Information to Receiving Party hereunder. Nothing in this Agreement obligates Disclosing Party to make any particular disclosure of Confidential Information or to complete, revise or update any Confidential Information. Nothing herein obligates either party to enter into or continue discussions or transactions related to any Transaction or prevents Disclosing Party from disclosing its Confidential Information to any other person or entity.
9. **Term**. This Agreement will continue in full force and effect for a term of three (3) years from the Effective Date. This Agreement, including the duty of Receiving Party to maintain the confidentiality of all Confidential Information received by it during the term of this Agreement as provided for herein, shall survive any change or termination of the parties’ business relationship.
10. **Remedies**. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.
11. **Miscellaneous**. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement. This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter hereof. This Agreement supersedes all prior written and oral agreements and all other communications between the parties. Amendments and modifications to this Agreement will be effective only if written and signed by both parties. This Agreement shall not be assigned without the written consent of the other party. This Agreement shall be binding upon and inure to the benefit of each party’s successors or permitted assigns. Except as expressly stated herein, each party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties hereto, and their successors and permitted assigns. If any provision in this Agreement is invalid or unenforceable in any circumstances, its application in any other circumstances and the remaining provisions of this Agreement will not be affected thereby. All notices, requests, consents and other communications required or permitted to be delivered hereunder must be made in writing and delivered by hand, via overnight delivery service or by registered or certified mail, postage prepaid. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this Agreement delivered by e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Each party represents and warrants that the individual signing below has the necessary authority to bind the party set forth below.

 IN WITNESS WHEREOF, the parties hereto have executed this Non-Disclosure Agreement as of the Effective Date.

**CALIFORNIA COMMUNITY POWER,**

**a California joint powers authority**

By:

Name:

Title:

**[SELLER]**

By:

Name:

Title: