

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (“Agreement”) dated this ____ day of May, 2017, is by and between [Insert Respondent Name], a [Insert Entity Type] (“Respondent”) and the City of Anaheim, a municipal California corporation (“Anaheim”) (individually “Party” and collectively “Parties”).

WITNESSETH

WHEREAS, the Parties hereto are engaged in discussions regarding Anaheim’s Request for Proposals dated May 1, 2017 (“RFP”) for the acquisition of Anaheim’s interests, liabilities, and obligations (3% nominal) in the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 (the “Purpose”); and

WHEREAS, in the course of fulfilling the Purpose, the Parties may disclose to each other confidential and proprietary information, including but not limited to certain oral, written, electronic mail (e-mail), or computer information, documents, materials, models, analyses, and business plans concerning the types of information set forth in Anaheim’s RFP such as Anaheim’s residual operating, environmental, marine, and decommissioning liabilities, Anaheim’s decommissioning trust fund balance, and the nature of SONGS governance rights pursuant to operating, settlement, and decommissioning agreements and balance sheet and financial track record information as well as other information and materials; the Parties shall treat such confidential and proprietary information as confidential (“Confidential Information”) pursuant to the terms of this Agreement; and

WHEREAS, the Parties desire that all Purpose information provided by Anaheim (whether created by Anaheim or created for Anaheim’s use by a third party and whether or not specifically described in the prior paragraph) be treated by Respondent as Confidential Information under this Agreement.

WHEREAS, the Parties desire that there be no oral or written disclosure to third parties of the nature and extent of such discussions and information exchange regarding the Purpose, including no oral or written disclosures to third parties of any such Confidential Information; however, to the extent disclosure is necessitated by law or otherwise, it shall be made on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Use of Confidential Information. The Parties agree that they will not use or disclose (and they will cause their respective employees, agents, affiliates, representatives and consultants not to use or disclose) in any form or for any reason any of the Confidential Information for any purpose that is not directly related to the Purpose described above. The Party receiving Confidential Information (“Recipient”) shall make use of the Confidential Information only for the Purpose and, except as provided below, shall not provide the Confidential Information to any other person without the express written consent of the party disclosing the Confidential Information (“Disclosing Party”). Recipient will notify each employee, agent, affiliate, representative, or consultant involved in the business discussions or who may have any occasion to view, handle, or obtain any of the Confidential Information, of the terms of this Agreement and shall require such person to enter into an agreement with terms similar to this Agreement. The Parties further agree that such Confidential Information will only be provided by Recipient to those of its directors, officers, elected or appointed officials, employees, agents, affiliates, advisors, representatives, or consultants with a need to know.

The Parties acknowledge that Anaheim is a public entity subject to the California Public Records Act, and the Ralph M. Brown Act; except to the extent permitted by law, the Parties may, without violating this Agreement, disclose matters that are made confidential by this Agreement to governmental officials or the public as required by any law, regulation, order, rule, ruling or other requirement of law ("Law"). Notwithstanding the foregoing, if any Recipient receives a request for Confidential Information, Recipient shall give Disclosing Party prompt written notice at the address designated herein prior to any disclosure in sufficient time to allow Disclosing Party, at its sole cost and expense, to seek a protective order or other appropriate remedy concerning such disclosure. Recipient will disclose only such information as it determines is legally required and will use commercially reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed. Recipient is not required to seek or obtain a judicial determination establishing confidential treatment, but it will cooperate in any efforts to do so by Disclosing Party. The address and phone number for notification to Anaheim is: City of Anaheim, Attention: Public Utilities General Manager, 201 South Anaheim Blvd., Suite 1101, Anaheim, California 92805 and (714) 765-5173. The address and phone number for notification of Respondent is: **[Insert Respondent's Contact Name, Phone, Address, and email]**.

2. Confidentiality Period. This Agreement and Recipient's duty to protect Confidential Information expires the longer of three (3) years from the date set forth above or after the conclusion of the Decommissioning of SONGS is completed, unless the Parties agree in writing to a different term.

3. Standard of Care. Recipient shall protect the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, disclosure, dissemination, or publication of the Confidential Information as Recipient uses to protect its own Confidential Information.

4. Identification. Recipient's obligation shall only extend to Confidential Information that: (a) is marked as confidential at the time of disclosure; or (b) is unmarked (e.g. orally disclosed) but treated as Confidential Information at the time of disclosure.

5. Exclusions. This Agreement imposes no obligation upon Recipient with respect to information that: (a) was rightfully in Recipient's possession before receipt from the Disclosing Party; (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) is rightfully received by Recipient from a third party without a duty of confidentiality; (d) is disclosed by Disclosing Party to a third party without duty of confidentiality on the third party; (e) is independently developed by Recipient; (f) is disclosed under operation of law; or (g) is disclosed by Recipient with Disclosing Party's prior written approval.

6. Rights. The supplying of Confidential Information shall not be considered to provide any license or proprietary rights, including any implied patent license or intellectual property rights in the property of the other by virtue of this Agreement.

7. Return or Destruction. Recipient will return to the Disclosing Party, upon demand or in the event either Party ceases to be interested in pursuing the Purpose, all Confidential Information provided to Recipient, including all copies thereof which may have been made by or on behalf of Recipient, and Recipient shall destroy, or cause to be destroyed, all notes or memoranda or other stored information of any kind prepared by Recipient relating to the Confidential Information or discussions generally.

8. Representations and Warranties. The Parties acknowledge that, except as may be set forth in a definitive, written agreement, neither Party nor any of its directors, officers, elected or appointed officials, employees, agents, affiliates, advisors, representatives, or consultants shall have been deemed to make, or shall be responsible for, any representations or warranties, express or implied, with respect to the accuracy or completeness of the Confidential Information supplied under this Agreement. Further, the Parties acknowledge hereby that only those representations and warranties made by the Parties in a definitive, written agreement shall have any force or effect.

9. Remedies. Recipient acknowledges and agrees that in the event of any breach of this Agreement, the Disclosing Party would be irreparably and immediately harmed and could not be made whole by monetary damages. It is accordingly agreed that Disclosing Party, in addition to any other remedy to which it may be entitled in law or equity, shall be entitled to injunctive relief to prevent breaches of this Agreement, and to compel specific performance of this Agreement, without the need for proof of actual damages.

10. No Relationship. This Agreement does not create any agency or partnership relationship.

11. Waiver. In no event shall either Party be liable to the other for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to this Agreement.

12. Entire Agreement. This Agreement embodies the entire understanding between the Parties pertaining to the subject matter hereof. Any additions or modifications to this Agreement must be made in writing and must be signed by both Parties.

13. Jurisdiction. This Agreement is made under, and shall be construed according to, the substantive laws of the State of California, without regard to the conflict of laws provisions. If any provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement shall remain in full force and effect.

14. No Binding Commitment. Nothing contained in this Agreement or in any discussions undertaken, or disclosures made pursuant hereto shall: (a) be interpreted or relied upon, directly or indirectly, by either Part as a commitment or intent to engage in a business relationship, contract, or future dealings with the other Party; and (b) prevent either Party from entering into similar discussions with unrelated third parties so long as such discussions do not violate the terms and conditions imposed by this Agreement.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement as of the date set forth above.

City of Anaheim, a municipal California corporation

[Insert Respondent Name], a [Insert Entity Type]

By: _____
Dukku Lee
Public Utilities General Manger

By: _____

Printed Name: _____

Title: _____

APPROVED AS TO FORM

CITY ATTORNEY'S OFFICE

By: _____
Alison M. Kott
Assistant City Attorney

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