



NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement”) is effective as of the 26th day of April 2018 (“Effective Date”), by and between Fall River Solar, LLC, a limited liability company organized under the laws of the state of Utah and having its principal place of business at 1612 E Bainbridge Rd, Sandy, Ut 84092, along with its parent companies a affiliates, and Ross Vrba (collectively, the “Receiving Party”), and Black Hills Power, Inc., a South Dakota corporation having a place of business at 7001 Mt. Rushmore Road, Rapid City, SD 57702 (“Black Hills”). The Receiving Party and Black Hills shall collectively be referred to as the “Parties”.

RECITALS

- A. The Receiving Party has requested avoided cost pricing and other information regarding the potential development of a solar energy project in Black Hills’ service territory (the “Potential Transaction”).
- B. In order to explore this relationship, it will be necessary for Black Hills to disclose certain Confidential Information (as hereinafter defined) to Receiving Party.

AGREEMENT

NOW THEREFORE, in consideration of the recitals, the mutual promises and covenants made herein, with the intent to be legally bound hereby, the Parties agree as follows:

- 1. Confidential Information. As used in this Agreement, the term “Confidential Information” includes all written information, data, correspondence or other tangible materials, and information disclosed orally, electronically or in any other intangible form by Black Hills to Receiving Party. Confidential Information shall include all information as described herein, whether or not it is marked Confidential or Proprietary.

Black Hills has the right to determine, in its sole discretion, what information it will provide to Receiving Party. Confidential Information shall not include the following:

- (a) information which at the time of disclosure by Black Hills is already public or becomes available to the public through no act or omission of Receiving Party;
- (b) information which was in Receiving Party’s possession prior to receipt from Black Hills;
- (c) information which is lawfully received independently from a third party who, to Receiving Party’s knowledge, is free to disclose such information to Receiving Party; or
- (d) information which is independently developed by or on behalf of Receiving Party without use of any Confidential Information.

Without Black Hills’ prior written consent, Receiving Party and its directors, officers, employees, consultants, agents, and advisors shall not disclose to any person or entity either the fact that discussion or negotiations are taking place concerning the Potential Transaction between the Parties or any of the terms, conditions, or other facts with respect to any such Potential Transaction, including the status thereof.

2. Disclosure and Use of Confidential Information. For a period of three (3) years from the Effective Date of this Agreement, Receiving Party agrees:
 - (a) to hold in confidence and not to disclose to any third party the Confidential Information, employing the same degree of care to keep such Confidential Information confidential as it employs with respect to its own information of like importance but in no event less than reasonable care; and
 - (b) not to use the Confidential Information for any purpose other than in connection with the Potential Transaction. Receiving Party may disclose Confidential Information on a need to know basis to its consultants and advisors and its employees who have a need to know such information for purposes of such evaluation, provided that such disclosures are made under confidentiality requirements consistent with those set forth in this Agreement.
3. Required Disclosure. If compelled by a requirement of a government agency, a court, or by law or discovery to disclose any of the Confidential Information, Receiving Party shall make reasonable efforts to resist disclosure and shall notify Black Hills in writing prior to making any disclosure in order to provide Black Hills a reasonable opportunity to either waive any objection to such disclosure or request a remedy from the appropriate authority. Receiving Party will reasonably cooperate with Black Hills in its efforts to obtain such a remedy. If Black Hills waives its objections or is unsuccessful in its request for a remedy or fails to make such a request, Receiving Party will furnish only that portion of the Confidential Information that is legally required.
4. Return of Documents. Black Hills may elect at any time to terminate further access to the Confidential Information. Receiving Party agrees to return, or destroy if so requested, any and all Confidential Information as well as any other information disclosed concerning Black Hills upon request, including all originals, copies or any other form of said material, without retaining any copy or duplicate thereof, and shall promptly destroy any and all translations, notes and other written, printed, computer based or readable or other material or information derived from the Confidential Information, without retaining any copy or duplicate thereof. Notwithstanding the foregoing, Receiving Party will not have an obligation to return or destroy Confidential Information stored in electronic backup systems, provided that such systems are not used to access such Confidential Information and the terms of this Agreement will continue to apply to such Confidential Information stored in electronic backup systems.
5. No Further Obligations. Nothing herein shall obligate Black Hills to disclose any particular information to Receiving Party. Neither of the Parties has an obligation under this Agreement to purchase any service or item from the other party. Receiving Party acknowledges that Black Hills may explore opportunities similar to the Potential Transaction with other companies that may be competitors of Receiving Party.
6. Remedies. Receiving Party acknowledges that remedies at law may be inadequate to protect Black Hills against any actual or threatened breach of this Agreement by Receiving Party, and, without prejudice to any other rights and remedies otherwise available to Black Hills, Receiving Party agrees to the granting of injunctive relief in favor of the Black Hills without proof of actual damages. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines that this Agreement has been breached by the Receiving Party, then it will reimburse Black Hills for its costs and expenses (including, without limitation, attorneys' fees and expenses) incurred in connection with all such litigation.

7. No Other Rights or License. Disclosure of any information under this Agreement shall not be construed as granting, directly or by implication, any license under any United States or foreign patent, patent application or copyright, or any other intellectual proprietary rights; nor shall this Agreement be construed as creating any agency or partnership relationship between the Parties.

8. Termination. This Agreement may be terminated by either party upon three days prior written notice to the other party; provided, however, that notwithstanding any termination hereof, Receiving Party's obligations under this Agreement shall remain in full force and effect with respect to Confidential Information disclosed prior to such termination for three (3) years after the effective date of such termination.

9. Non-Solicitation. During the term of the Agreement, and for a period of two (2) years after the active business relationship ends or is terminated for any reason, the Receiving Party agrees that it will not, without prior written consent from Black Hills, directly or indirectly, recruit, solicit, hire, or retain for employment or contract services, any current employee of Black Hills or any employee who has been employed by Black Hills at any time during the term of the Agreement who became known to Receiving Party in connection with its consideration of the Potential Transaction, provided that Receiving Party is not precluded from hiring or contracting services from any employee of Black Hills who (i) responds to a general solicitation placed by Receiving Party or its recruiting firm; or (ii) has been terminated by Black Hills prior to commencement of employment discussions.

10. Miscellaneous. This Agreement supersedes all prior agreements, understandings, representations and statements, whether oral or written, between the Parties relating to the subject matter of this Agreement. The terms of this Agreement may not be changed except by subsequent written agreement duly executed by an authorized representative of each of the Parties. This Agreement may not be assigned by either party without the prior written consent of the other party, shall be binding upon the Parties and their successors and permitted assigns, and shall inure to the benefit of and shall be enforceable by the Parties and their successors and permitted assigns. The invalidity in whole or in any part of this Agreement does not affect the validity of the remainder of the Agreement. Notices given under this Agreement shall be in writing and delivered by first class, certified mail to each signatory at the addresses identified herein, unless changed by written notice, with a copy to Black Hills' General Counsel. This Agreement shall be interpreted in accordance with the laws of the state of South Dakota without regard to its conflicts of laws principles. The venue for any dispute arising hereunder shall be in state or federal courts located within the state of South Dakota. This Agreement may be executed by facsimile and in one or more counterparts, each of which will be deemed to be an original, and all of which when taken together, shall be deemed to constitute one and the same agreement.

The undersigned have caused this Agreement to be duly effective as of the date first set forth above.

BLACK HILLS POWER, INC

FALL RIVER SOLAR LLC

(signature)

Ros Rocco Vrba

(signature)

(name printed)

(title)

(date)

ROS VRBA, Individually

Ros Rocco Vrba

(signature)

Ros Rocco Vrba MBA
(name printed)

Individual
(title)

4.26.2018
(date)

Ros Rocco Vrba MBA
(name printed)

President
(title)

4.16.2018
(date)