

CONFIDENTIALITY AND NON-CIRCUMVENTION AGREEMENT

This Confidentiality and Non-Circumvention Agreement (this "**Agreement**") is entered into as of _____, 20____ (the "**Effective Date**") by and between **First Meter Partners**, a _____ ("**FMP**"), and _____, a _____ ("**Recipient**"). FMP and Recipient are each a "**Party**" and together the "**Parties**".

RECITALS

- A. FMP identifies, secures and develops sites in Texas for industrial-scale electric load, including data centers and related facilities, and invests in those sites alongside its limited partners.
- B. Recipient wishes to evaluate one or more of those sites, and a possible investment in, acquisition of, lease of or development of them with FMP (the "**Purpose**"). To do so Recipient will receive information that identifies the sites, the substations and utility capacity that serve them, the landowners, and the commercial terms FMP has secured.
- C. The value of that information lies in knowing where power is available and who controls the land. FMP will disclose it only if Recipient agrees not to use it to go around FMP. This Agreement sets out that agreement.

For good and valuable consideration, including FMP's disclosure of Confidential Material to Recipient, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. DEFINITIONS

- 1.1 "**Affiliate**" means any person that directly or indirectly controls, is controlled by, or is under common control with a Party, where "control" means ownership of fifty percent (50%) or more of the voting equity or the power to direct management and policies.
- 1.2 "**Confidential Material**" means all information disclosed or made available to Recipient or its Representatives by or on behalf of FMP, before or after the Effective Date, in any form, whether or not marked confidential, including: the identity, location, boundaries, coordinates, parcel numbers and ownership of any site; the identity of any substation, feeder, transmission line or utility serving or proposed to serve a site, and any load study, capacity confirmation, interconnection request, queue position or correspondence with a utility, ERCOT or any governmental authority; land schedules, option, lease and purchase terms; financial models, fund terms, investor information and projections; maps, surveys, engineering, environmental and geotechnical reports; and all notes, analyses, compilations and other materials prepared by Recipient or its Representatives that contain or reflect any of the foregoing.
- 1.3 "**Designated Substation**" means, for each Disclosed Site, the electric substation identified by FMP in writing as serving or proposed to serve that Disclosed Site. If FMP has not identified one, it means the existing electric substation nearest to any boundary of that Disclosed Site, measured in a straight line.
- 1.4 "**Disclosed Site**" means each tract of land that FMP identifies to Recipient or its Representatives in writing, including by e-mail, data room, map, address, parcel number or coordinates, together with any land contiguous to it that is owned by the same owner. A site is a Disclosed Site from its Disclosure Date whether or not FMP delivers a Site Notice in the form of Exhibit A. FMP may, but need not, confirm a Disclosed Site by Site Notice, and a Site Notice is conclusive as to the site, Designated Substation and Disclosure Date it states unless Recipient objects in writing within five (5) business days of receipt.

- 1.5 **"Disclosure Date"** means, for each Disclosed Site, the date on which FMP first identifies that site to Recipient or its Representatives in writing.
- 1.6 **"Introduced Party"** means any landowner, lessor, optionor, utility, retail electric provider, generator, broker, contractor, investor, lender, tenant or other person that FMP introduces or identifies to Recipient in connection with a Disclosed Site or the Purpose.
- 1.7 **"Representatives"** means a Party's Affiliates and its and their officers, directors, managers, members, partners, employees, agents, advisors, consultants, contractors, lenders, investors and prospective investors.
- 1.8 **"Restricted Area"** means, for each Disclosed Site: (a) the Disclosed Site itself; and (b) all land any part of which lies within five (5) miles of the Designated Substation, measured in a straight line from the nearest point of the fence line of the Designated Substation (or, if it has no fence line, from its center point).
- 1.9 **"Restricted Period"** means, for each Disclosed Site, the period beginning on its Disclosure Date and ending two (2) years after its Disclosure Date, as extended under Section 8.4.

2. CONFIDENTIALITY

- 2.1 Recipient shall use Confidential Material only for the Purpose, and for no other purpose, including any purpose that competes with FMP or its Affiliates.
- 2.2 Recipient shall hold Confidential Material in strict confidence and shall not disclose it to any person other than those of its Representatives who need it for the Purpose, who have been told it is confidential, and who are bound to keep it confidential on terms no less protective than this Agreement. Recipient shall not disclose Confidential Material to any prospective lender, investor or co-investor without FMP's prior written consent. Recipient is responsible for any act or omission of its Representatives that would breach this Agreement if done by Recipient.
- 2.3 Recipient shall not copy Confidential Material except as reasonably necessary for the Purpose, and shall not remove any confidentiality marking from any copy.
- 2.4 Without FMP's prior written consent, Recipient shall not disclose to any person other than its Representatives the fact that Confidential Material has been made available, that discussions are taking place, or any of their terms or status.
- 2.5 The obligations in this Article 2 continue for two (2) years from the date each item of Confidential Material is disclosed, except that information that is a trade secret under applicable law shall be protected for as long as it remains a trade secret.

3. EXCLUSIONS

- 3.1 Article 2 does not apply to information that Recipient can demonstrate by written records: (a) is or becomes generally available to the public other than through a disclosure by Recipient or its Representatives; (b) was lawfully in Recipient's possession before FMP disclosed it, free of any duty of confidence; or (c) was lawfully received by Recipient from a third party that, to Recipient's knowledge after reasonable inquiry, was not bound by a duty of confidence to FMP or any other person.
- 3.2 The exclusions in Section 3.1 do not apply to Article 4. The public availability of a substation's location, a parcel's ownership, or any other individual fact does not permit Recipient to use FMP's

identification of a Disclosed Site, its Designated Substation or its available capacity, which the Parties agree is itself Confidential Material.

4. NON-CIRCUMVENTION

- 4.1 During the Restricted Period for each Disclosed Site, Recipient shall not, and shall cause its Affiliates and Representatives not to, directly or indirectly, alone or with or through any other person, except through FMP under Section 4.5:
- (a) purchase, lease, option, acquire any easement or other interest in, or enter into any letter of intent, term sheet or negotiation for, any land within the Restricted Area;
 - (b) contact, solicit or negotiate with the owner, lessor or optionor of the Disclosed Site, or any of its Affiliates, concerning the Disclosed Site or any other land within the Restricted Area;
 - (c) submit, acquire, fund or pursue any load interconnection request, generation interconnection request, load study, capacity request, facility extension agreement, or request for electric service that would be served from the Designated Substation, or that concerns any land within the Restricted Area, whether the load or facility is located inside or outside the Restricted Area;
 - (d) contact the transmission and distribution service provider, ERCOT or any retail electric provider concerning available capacity at the Designated Substation, other than as FMP requests in writing;
 - (e) develop, finance, invest in, or acquire any equity or other interest in any person or project that is doing any of the things described in clauses (a) through (d); or
 - (f) solicit, accept or enter into any transaction concerning any Disclosed Site or the Restricted Area with any Introduced Party, or otherwise circumvent, bypass or interfere with FMP's relationship with any Introduced Party.
- 4.2 Recipient shall not use Confidential Material to identify, evaluate or pursue any site, substation or utility capacity, wherever located, in a manner that would deprive FMP of the benefit of its disclosure.
- 4.3 If any landowner, utility, broker or other person approaches Recipient or its Representatives during a Restricted Period about land within the Restricted Area or capacity at the Designated Substation, Recipient shall decline to engage and shall notify FMP in writing within five (5) business days.
- 4.4 Schedule 1 lists every interest Recipient or its Affiliates held as of the Effective Date in land, interconnection requests or capacity that would otherwise fall within this Article 4 (the "**Prior Interests**"). Schedule 1 is complete as of the Effective Date and is initialled by both Parties. Article 4 does not restrict Recipient's continued ownership and development of its Prior Interests as described there. If Schedule 1 is blank or states "None", Recipient has no Prior Interests, and Recipient shall not assert that any interest was omitted from Schedule 1 by inadvertence.
- 4.5 Article 4 does not restrict any transaction concerning a Disclosed Site or the Restricted Area that Recipient enters into with FMP or its Affiliates under a definitive written agreement, or that FMP approves in advance in a writing signed by FMP that refers to this Section 4.5. A definitive agreement with FMP concerning one Disclosed Site does not release Article 4 as to any other Disclosed Site.
- 4.6 Recipient acknowledges that FMP's business depends on the confidentiality of where it has found available power; that the Restricted Area, the Restricted Period and the restricted activities are

reasonable and no broader than necessary to protect FMP's goodwill and Confidential Material; and that Article 4 is ancillary to Recipient's enforceable promises in Article 2 and FMP's disclosure of Confidential Material in reliance on them. If a court finds any restriction in Article 4 unreasonable, the court shall reform it to the maximum restriction the court finds reasonable and enforce it as reformed.

5. RETURN AND DESTRUCTION

- 5.1 On FMP's written request, and in any event when Recipient decides not to proceed with the Purpose, Recipient shall promptly return or destroy all Confidential Material in its or its Representatives' possession, and on request shall certify that it has done so in a writing signed by an officer. Recipient may retain copies held in routine electronic backups that are not readily accessible, provided they are not accessed and remain subject to this Agreement.
- 5.2 Return or destruction does not release Recipient from any obligation under this Agreement, including Article 4.

6. NO WARRANTY, NO OBLIGATION, NO OFFER

- 6.1 Confidential Material is provided "as is". FMP makes no representation or warranty as to its accuracy or completeness, including as to the availability, timing or cost of electric capacity. Only the representations and warranties made in a definitive written agreement, if one is signed, will have any effect.
- 6.2 Neither Party is obligated to enter into any transaction by reason of this Agreement. FMP may disclose information to others, stop disclosing information to Recipient, reject any proposal, and end discussions at any time without liability.
- 6.3 Nothing in this Agreement or in any Confidential Material is an offer to sell, or a solicitation of an offer to buy, any security or interest in any fund or entity. Any such offer will be made only by definitive offering documents, and only to persons qualified to receive them.
- 6.4 No license or other right in any Confidential Material is granted, and FMP retains all title to it.

7. NON-SOLICITATION

- 7.1 For one (1) year after the Effective Date, Recipient shall not solicit for employment or engagement any employee or contractor of FMP or its Affiliates with whom Recipient had contact in connection with the Purpose. General solicitations not targeted at those persons, and hiring any person who responds to them, are not a breach.

8. REMEDIES

- 8.1 A breach of this Agreement will cause FMP irreparable harm for which damages are not an adequate remedy. FMP is entitled to injunctive relief and specific performance for any actual or threatened breach, in addition to any other remedy, without posting bond or proving actual damages, and Recipient waives any requirement for a bond.
- 8.2 If Recipient or any of its Affiliates or Representatives enters into any transaction in breach of Article 4, Recipient shall account for and pay to FMP all fees, profits, equity, consideration and other value received or receivable by Recipient, its Affiliates or its Representatives from that transaction, without limiting FMP's right to recover its actual damages if greater.

- 8.3 Neither Party is liable to the other for punitive or exemplary damages. That limit, and any other limit on consequential or lost-profit damages, does not apply to a breach of Article 2 or Article 4.
- 8.4 The Restricted Period for a Disclosed Site is extended by the length of any period during which Recipient or any of its Affiliates or Representatives is in breach of Article 4 as to that Disclosed Site.
- 8.5 If FMP prevails in any action to enforce this Agreement, Recipient shall pay FMP's reasonable attorneys' fees, expert fees and costs.

9. TERM

- 9.1 This Agreement begins on the Effective Date and continues for two (2) years (the "**Term**"). A site identified by FMP during the Term is a Disclosed Site for its full Restricted Period, even if that period ends after the Term. Articles 2 through 8 and 10 through 11 survive expiry of the Term for as long as needed to give them full effect.

10. NOTICES

- 10.1 Any notice under this Agreement shall be in writing and is given: (a) when hand-delivered; (b) three (3) business days after deposit in the United States mail, certified, return receipt requested, postage prepaid; (c) one (1) business day after deposit with a nationally recognized overnight courier; or (d) on transmission by electronic mail to the address in the signature block below. Each Party's notice address and electronic mail address are set out in the signature block and shall not be left blank. Either Party may change its notice address, including its electronic mail address, by notice given under this Section.

11. GENERAL

- 11.1 **Assignment.** Recipient may not assign this Agreement without FMP's prior written consent, and a transfer of fifty percent (50%) or more of the voting equity of Recipient is an assignment. FMP may assign this Agreement to any Affiliate or to any fund, partnership or entity sponsored or managed by FMP or its Affiliates, which may enforce it as to the Disclosed Sites. This Agreement binds and benefits the Parties and their successors and permitted assigns.
- 11.2 **Entire agreement; amendment; waiver.** This Agreement is the entire agreement of the Parties on its subject and supersedes all prior agreements on it. It may be amended or waived only in a writing signed by both Parties. No failure or delay in exercising a right is a waiver of it.
- 11.3 **Severability.** If any provision is held invalid or unenforceable, it shall be reformed to the extent necessary to make it enforceable, and the rest of this Agreement is unaffected.
- 11.4 **Governing law; venue.** This Agreement is governed by the laws of the State of Texas, without regard to conflict of laws rules. The state and federal courts located in Harris County, Texas have exclusive jurisdiction over any dispute under it, and each Party submits to that jurisdiction.
- 11.5 **Waiver of jury trial.** EACH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF THIS AGREEMENT.
- 11.6 **Exhibits and schedules.** Schedule 1 and Exhibit A are part of this Agreement. Schedule 1 is complete as of the Effective Date.
- 11.7 **Counterparts; electronic signature.** This Agreement may be signed in counterparts and by electronic signature, each of which is an original and all of which are one instrument.

The Parties have signed this Agreement as of the Effective Date.

FMP

First Meter Partners, a _____

By: _____

Name: _____

Title: _____

Address: _____

E-mail for notice: _____

RECIPIENT

By: _____

Name: _____

Title: _____

Address: _____

E-mail for notice: _____

SCHEDULE 1

PRIOR INTERESTS OF RECIPIENT AS OF THE EFFECTIVE DATE

List each interest held by Recipient or its Affiliates on the Effective Date in land, interconnection requests, load studies or utility capacity that would otherwise be restricted by Article 4. Identify the land by county and parcel number or coordinates, and the substation by name and utility. If there are none, write "None". This Schedule is complete as of the Effective Date (Section 4.4).

Interest (fee, lease, option, IR, study)	County and parcel / coordinates	Substation and utility	Date acquired

Initials: FMP _____ Recipient _____

EXHIBIT A

FORM OF SITE NOTICE

To: _____ ("Recipient")

Under the Confidentiality and Non-Circumvention Agreement between First Meter Partners and Recipient dated _____ (the "Agreement"), FMP confirms the following Disclosed Site. Capitalized terms have the meanings given in the Agreement. Delivery of this notice is not required for a site to be a Disclosed Site (Section 1.4).

Site reference	County, parcel / coordinates, acreage	Designated Substation and utility	Disclosure Date

The Restricted Area for each site above is the site and all land within five (5) miles of the Designated Substation. The Restricted Period runs two (2) years from the Disclosure Date. Unless Recipient objects in writing within five (5) business days of receipt, this notice is conclusive as to the matters it states.

First Meter Partners

By: _____ Date: _____