

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

372



FROM: County Executive Office

SUBMITTAL DATE:
July 6, 2011

SUBJECT: Ratification of Non-disclosure Agreement with First Solar, Inc.

RECOMMENDED MOTION: That the Board of Supervisors ratify the attached non-disclosure agreement with First Solar, Inc.

BACKGROUND: On June 28, 2011, the Board directed staff to negotiate the terms of a franchise agreement with First Solar, Inc. In a good faith effort to obtain from First Solar information useful to moving these negotiations forward, on June 30 the County Executive Officer signed the attached non-disclosure agreement required by First Solar. The requested information is necessary to evaluate First Solar's projections of property tax and sales and use taxes to be generated by their proposed solar project.

Departmental Concurrence

FORM APPROVED COUNTY COUNSEL
BY: [Signature] DATE: 7/6/11

Denise C. Harden
Denise C. Harden, Principal Management Analyst

FINANCIAL DATA	Current F.Y. Total Cost:	\$	In Current Year Budget: Budget Adjustment: For Fiscal Year:
	Current F.Y. Net County Cost:	\$	
	Annual Net County Cost:	\$	

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Bill Luba*
Bill Luba

County Executive Office Signature

- Consent
- Policy
- Consent
- Policy

Dep't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: 06/28/11 #3.111 | District: | Agenda Number: **3.7**

Unilateral Non-Disclosure Agreement

This Unilateral Non-Disclosure Agreement ("Agreement") is effective as of June 29, 2011

between **First Solar, Inc.**, a company incorporated under the laws of the State of Delaware and having its principal place of business at 350 W. Washington Street, 6th Floor, Tempe, Arizona 85281, for itself and on behalf of its subsidiaries (collectively the "**Disclosing Party**"); and the following person or company ("**Receiving Party**"), for itself and on behalf of its subsidiaries, if any:

County of Riverside

4080 Lemon Street Riverside, California 92501

A Political Subdivision

The following "Data Control Persons" are hereby appointed to receive Confidential Information exchanged under this Agreement:

For Disclosing Party: James Woodruff, Vice President
Kim Oster, Director

For Receiving Party: Bill Luna, Chief Executive Officer

The parties wish to work together on the following "Project":

Discussion regarding a franchise agreement to use Receiving Party's right of way for a generation tie line for Disclosing Party's Desert Sunlight project, which is a proposed photovoltaic electricity generation facility.

In carrying out the Project, it may be necessary for the Disclosing Party to disclose to the Receiving Party certain business, marketing and technical information in the possession of the Disclosing Party that is non-public, confidential or proprietary in nature.

In consideration of the mutual covenants herein, the parties agree as follows:

1. DEFINITIONS

1.1 "Confidential Information" means any business, financial, marketing, technical, scientific or other information or materials, including samples, disclosed by the Disclosing Party to the Receiving Party in connection with the Project, even if disclosed before the effective date of this Agreement, that is:

- (a) first disclosed in written form and conspicuously marked "Confidential" or "Proprietary", or the like at the time or within 30 days of disclosure;
- (b) first disclosed in non-tangible form and orally identified as confidential or proprietary at the time of disclosure or confirmed in writing within 30 days of disclosure; or
- (c) otherwise learned or viewed by the Receiving Party during a visit to the Disclosing Party's premises.

1.2 "Confidential Information" does not include the franchise agreement or any term thereof.

2. DISCLOSURE PERIOD AND PROTECTION PERIOD

2.1 This Agreement shall cover any and all Confidential Information received from the effective date of this Agreement for a period of one (1) year (the "Disclosure Period") or when terminated by either party with not less than two (2) weeks prior written notice to the other party, whichever is earlier. Any duties or obligations relating to the use, disclosure, protection or return of Confidential Information pursuant to this Agreement shall survive the expiration or termination of the Disclosure Period and continue in effect from the effective date of this Agreement until the parties agree to terminate those duties and obligations in writing (the "Protection Period"). After the Protection Period, the Receiving Party shall have no right to keep, disclose or use and shall promptly destroy or return to the Disclosing Party all Confidential Information in the Receiving Party's possession or control in accordance with Section 3.6.

3. RESTRICTIONS ON USE AND DISCLOSURE

3.1 The Receiving Party will not use the Confidential Information for any purpose other than in connection with the Project.

3.2 The Receiving Party will hold the Confidential Information in confidence and trust, and will not disclose, or provide access to, any Confidential Information, directly or indirectly, to any person except as expressly permitted by this section or with the prior written consent of the Disclosing Party. The Receiving Party may disclose the Confidential Information within its organization and to its professional advisors, but only to those having a need to know for the purposes of the Project, are informed of its confidential nature, and expressly agree to be bound by (or by reason of their employment have a duty to comply with) this Agreement. The Receiving Party shall (a) protect the Confidential Information with at least the same degree of care with which it protects its own Confidential Information, but in no case less than a reasonable degree of care, and (b) not use any of the Confidential Information as a basis to develop, help develop, modify, help modify, alter or help any third party equipment or solar module production processes (and not to assist any third party in any manner to perform any such activities). The Receiving Party may make only such copies of the Confidential Information as are necessary for the Project. Any such copies must reproduce proprietary markings included therein.

3.3 All Confidential Information, regardless of its form,

will be routed through or copied to one of the Receiving Party's Data Control Persons but a failure to do so will not affect whether the information is Confidential Information. Each Party may change its Data Control Person by written notice to the other.

- 3.4 The Receiving Party's obligations of confidentiality and restrictions on use do not apply to information that is:
- (a) already public knowledge or becomes public knowledge through no fault or negligence of the Receiving Party;
 - (b) shown by the written records of the Receiving Party to have been possessed or known to the Receiving Party prior to its receipt from the Disclosing Party, or to have been independently developed by the Receiving Party's personnel acting without access to the Confidential Information;
 - (c) disclosed by the Disclosing Party after the Disclosure Period; or
 - (d) rightfully received by the Receiving Party from a third party that has no obligation of confidentiality to the Disclosing Party and without solicitation by the Receiving Party.

Confidential Information will not be deemed to be within the foregoing exceptions merely because it (or a portion thereof) is expressed in more general terms publicly or in items in the Receiving Party's possession.

- 3.5 The parties understand that information received pursuant to this Agreement may be subject to disclosure under the California Public Records Act, Government Code section 6250, et seq. In the event a request for disclosure of information is made, Receiving Party shall notify Disclosing Party of the request in writing and shall thereafter disclose the requested information unless Disclosing Party, within fourteen (14) business days of receiving notice of the disclosure request, demands nondisclosure. In the event Disclosing Party demands nondisclosure, Disclosing Party shall defend, indemnify and hold harmless Receiving Party in any legal action by a third party under the California Public Records Act.
- 3.6 The Receiving Party is permitted to disclose Confidential Information pursuant to the order of a court or administrative body of competent jurisdiction, if the Receiving Party notifies the Disclosing Party of the order at the earliest reasonable opportunity so that the Disclosing Party can seek an appropriate protective order, and, in the event that such a protective order is not obtained, the Receiving Party furnishes only that portion of the Confidential Information that is legally required to be disclosed.
- 3.7 All Confidential Information is and will remain the sole property of the Disclosing Party, and all copies

and excerpts thereof will be promptly returned to the Disclosing Party or destroyed upon the Disclosing Party's request, or voluntarily, except that the Receiving Party's legal counsel may retain one copy for use only as a record of disclosure. If requested, the Receiving Party will certify in writing its compliance with the provisions of this Section.

4. GENERAL

- 4.1 Any Confidential Information disclosed under this Agreement is provided "as is" and without any warranty, express or implied. The Disclosing Party will have no liability to the Receiving Party with respect to any Confidential Information disclosed under this Agreement.
- 4.2 The Receiving Party undertakes to take responsibility for any breach of this Agreement by any person to whom Receiving Party has disclosed Confidential Information under Section 3.2 herein.
- 4.3 The Receiving Party acknowledges that any unauthorized use or disclosure of the Confidential Information, or any threat thereof, would likely cause the Disclosing Party irreparable harm that could not be fully remedied by monetary damages. So, the Receiving Party agrees that the Disclosing Party will have the right, in addition to any other remedy available to it, to seek injunctive or other equitable relief from a court of competent jurisdiction, without proof of actual damage, as may be necessary to prevent any unauthorized use or disclosure.
- 4.4 The parties agree that should any provision of this Agreement be held to be illegal, invalid or unenforceable, in whole or in part, under present or future laws, such provision will be ineffective to the extent of such illegality, invalidity or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
- 4.5 The parties are independent contractors. This Agreement does not create any partnership, joint venture, agency, or other relationship (beyond that of independent contractors) between the parties.
- 4.6 This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
- 4.7 This Agreement expresses the entire understanding between the parties concerning the subject matter of this Agreement, and supersedes all prior and contemporaneous oral or written agreements relating thereto; provided, however, that other non-disclosure agreements between the parties shall remain in full force and effect unless terminated herein by specific reference to the name and date thereof. Nothing herein is intended to be construed as a waiver or limitation on either party's common law rights and obligations, including maintaining confidential information or trade secrets during or after the term of this Agreement.



IN WITNESS OF WHICH, the undersigned, duly authorized, accept and agree to the above provisions as of the effective date of this Agreement, and acknowledge receipt of a copy of this Agreement.

First Solar, Inc. ("Disclosing Party")	
Signature	<i>Lisa Bodensteiner</i>
Name	Lisa Bodensteiner
Title	General Counsel, PD

Riverside County ("Receiving Party")	
Signature	<i>Bill Luna</i>
Name	BILL LUNA
Title	CEO