

**NON-INTERFERENCE AGREEMENT**

This Non-Interference Agreement (“Agreement”) is entered into as of May 21, 2009, by and between BrightSource Energy, Inc. (“BrightSource”), a Delaware corporation, and DesertXpress Enterprises, LLC (“DX”), a Nevada limited liability company (collectively, the “Parties”).

**RECITALS**

- A.** BrightSource is the parent company of Solar Partners I, Solar Partners II, Solar Partners IV, and Solar Partners VIII, which are all Delaware limited liability companies (collectively, “Solar Partners”).
- B.** On February 13, 2006, DX, the Federal Railroad Administration (“FRA”), and the federal Surface Transportation Board (“STB”) executed a Memorandum of Understanding for execution of the Federal NEPA process for the DesertXpress High-Speed Passenger Train (“DX Project”).
- C.** On July 14, 2006, the Notice of Intent for the DX Project Environmental Impact Statement (“EIS”) was published in the Federal Register. The EIS scoping meetings were held in the Las Vegas area on July 25, 2006; in the Barstow area on July 26, 2006; and in Victorville on July 26, 2006. In the Scoping meetings, the FRA presented the Applicant’s (DX) Action Alternative. In segment 4, the Action Alternative described included two alternative alignments in the vicinity of the east approach to Mountain Pass on Interstate 15 in California: Alignment Alternative Segment 4A (“Segment 4A”) which would extend through a short segment of the Mojave National Preserve along the south side of I-15; and Alternative Segment 4B (“Segment 4B”), which would extend through an area north and east of Mountain Pass.
- D.** On August 26, 2006, DX submitted a ROW Application to the United States Bureau of Land Management (“BLM”) for a right-of-way grant for those portions of the corridor between Victorville and Las Vegas that would be located on federal land. The Application identified the two alternative alignments in the vicinity of the east approach to Mountain Pass on Interstate 15 in California that were presented in the EIS Scoping meetings: Segment 4A and Segment 4B.
- E.** On November 17, 2006, Solar Partners submitted an application (“ROW Application”) to BLM for a right-of-way grant to construct and operate a Solar Electric Generating System and supporting facilities and transmission lines near the Ivanpah Dry Lake in the Mojave Desert (“Ivanpah Project”). The application was modified on December 14, 2006, and January 22, 2007. On August 31, 2007, Solar Partners submitted an Application for Certification (“AFC”) to the California Energy Commission (“Energy Commission”) to construct and operate the Ivanpah Project.
- F.** The Boundaries of the Ivanpah Project are set forth in Exhibit A of this Agreement.
- G.** On August 8, 2007, BLM and the Energy Commission executed a Memorandum of Understanding in which they agreed to conduct joint environmental reviews of solar thermal power plants proposed to be built on BLM land in California, including the Ivanpah Project.

**H.** On October 22, 2007, following a request from the BLM for DX to identify its Proposed Action Alternative, DX submitted the legal description of its Proposed Alignment as a supplement to its ROW Application, within which DX identified Segment 4A as its proposed segment in the aforementioned area, subject to the evaluation of its environmental impacts and its availability for use by the DX Project.

**I.** On November 6, 2007, the Notice of Intent for the Ivanpah Project EIS was published in the Federal Register. BLM held a scoping meeting on January 4, 2008, in San Bernardino County, California. BLM and the Energy Commission held a joint scoping meeting and informational hearing on January 25, 2008, in Primm, Nevada.

**J.** On December 11, 2008, BLM notified DX that one of its proposed route segments – Segment 4B – traveled through portions of two proposed solar power projects: the Ivanpah Project and a solar power project proposed by OptiSolar, Inc. (“OptiSolar” and the “OptiSolar Project”).

**K.** On January 21, 2009, BLM sent a letter to DX, BrightSource, and OptiSolar alerting the parties of the conflict and urging the companies “to consult together to determine if there is a mutually agreeable solution so that both projects could co-exist.” This was the first formal notice from BLM to either Party that Segment 4B would occupy the same area as the Ivanpah Project.

**L.** On March 18, 2009, the Federal Railroad Administration (“FRA”) issued a Draft EIS (“DEIS”) for the DX Project. In the DEIS, Segment 4B passes through the Boundaries of the Ivanpah Project.

**M.** On April 14, 2009, and May 7, 2009, principals from the Parties held coordination meetings in Oakland and Las Vegas, respectively, in an effort to develop alternatives that would ensure that the Ivanpah Project and the DX Project do not conflict with one another. DX also had conversations with BLM, in which BLM advised DX to develop an alternative route that avoided the Ivanpah Project, the OptiSolar Project, and the Ivanpah Dry Lake.

**N.** As a result of those meetings and conversations, DX developed several potential alternative alignments to attempt to avoid the Ivanpah Project area (“Avoidance Alternatives”), including potential Alignment Alternative Segment 4C (“Segment 4C”) shown in Exhibit B. Segment 4C is longer than Segment 4B and requires approximately one-half mile more tunneling than Segment 4B, thereby making it more costly to construct.

**O.** The Parties wish to avoid conflict and to ensure that the Ivanpah Project and the DX Project do not interfere with one another.

### **AGREEMENT**

Now, therefore, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals.** The above recitals are incorporated by reference into this agreement.
2. **Selection and Approval of Segment 4.** DX shall formally request FRA to include Segment 4C or a variation thereof in the Final EIS for the DX Project as an Avoidance Alternative to Segment 4B such that no portion of the DX Project would be located within the Boundaries of the Ivanpah Project. Implementation of the DX Project on Segment 4C is conditioned upon Segment 4C being selected as the agency preferred alignment alternative by FRA and the cooperating Federal agencies as described in their respective Records of Decision; and BLM approval of a ROW grant for use of Segment 4C ("Agency Approvals").

Following completion of the initial environmental analysis of Segment 4C and written confirmation from the BLM that Segment 4C is acceptable and will be analyzed in the Final EIS, DX shall request that Segment 4B be dropped from further consideration.

DX will continue in its efforts to secure the use of Segment 4A. BrightSource shall cooperate with DX in its efforts to secure the use of Segment 4A and 4C for the DX Project.

In the event DX is unable to secure the Agency Approvals for Segment 4A or 4C, the Parties agree to meet and confer to discuss possible solutions that are mutually acceptable to the Parties. Should the Parties be unable to reach a mutually agreeable solution, DX agrees that it shall immediately submit a written request to FRA to reconsider selection of Segment 4A or 4C.

3. **Location of the DX Project.** No portion of the DX Project shall be located within the Boundaries of the Ivanpah Project, unless the Ivanpah Project fails to obtain a ROW grant from BLM and certification from the Energy Commission by January 1, 2013. During the period prior to January 1, 2013, DX and its employees, officers, contractors, and agents shall not build or install any structure, store any material, or perform any work or activity of any kind related to the DX Project within the Boundaries of the Ivanpah Project, unless DX obtains advance written permission from BrightSource.

4. **Additional Costs.** BrightSource shall reimburse DX for 50% of its actual documented additional engineering and environmental consultant costs associated with obtaining the environmental clearance and approvals of the Segment 4C Avoidance Alternative, up to a maximum reimbursement of \$50,000. All other costs associated with this Agreement shall be borne by the respective Party incurring said costs, except as specified in Paragraph 6 below.

5. **Non-Opposition.** Neither Party shall oppose or publicly criticize the other Party's project, or submit comments with regard to the other Party's project in any public process. The Parties shall jointly submit this agreement into the administrative record for the DX Project. Neither Party shall support or assist any third-party in opposing or publicly criticizing the other Party's project. BrightSource shall formally withdraw all of its letters of criticism of and in opposition to the DX Project filed prior to execution of this Agreement, if any. BrightSource shall request all third parties with whom it has discussed such criticism and opposition of the DX Project to also withdraw their criticism and opposition, if any, and BrightSource shall use good faith efforts to encourage those parties to do so. To the extent that BrightSource has made comments or has had communication with federal agencies or third parties that could negatively

affect the DX project, BrightSource shall use good faith efforts to retract such statements and shall request that such third parties similarly retract their negative communications.

6. **Remedy for Breach.** Each Party acknowledges and agrees that money damages would not be a sufficient remedy for any actual or threatened breach of any provision of this Agreement by the other Party, and that in addition to all other remedies that the non-breaching Party may have, the non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief as a remedy for such actual or threatened breach. If either Party to this Agreement initiates or defends any action or proceeding against the other Party in connection with this Agreement, the prevailing Party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover its costs of suit including reasonable attorneys' fees.

7. **Governing Law.** This Agreement shall be governed, construed, applied, and enforced in accordance with the laws of the State of California.

8. **Successors and Assigns.** All of the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties' successors and assigns; provided, however, that no assignment of this Agreement by a Party shall release that Party from its obligations hereunder. The term "successors and assigns" shall include any person or entity who becomes a successor to BrightSource or DX with regard to any pending application for the Ivanpah Project or DX Project, respectively.

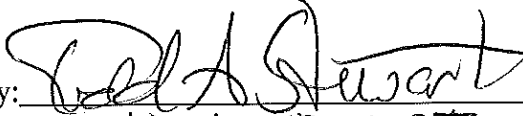
9. **No Third-Party Beneficiary.** The terms of this Agreement are for the sole and exclusive protection and benefit of the Parties. No other person or entity shall be a third-party beneficiary hereunder and no provision hereof shall operate or inure to the benefit of any third-party.

10. **Entire Agreement.** There are no oral or side agreements between the Parties regarding the subject matter of this Agreement, and this Agreement contains the entire agreement of the parties with regard to the subject matter contained herein. No amendment, modification, termination, or cancellation of this Agreement shall be effective unless in writing and signed by both Parties.


11. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute the same instrument.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first above written with the intent to be legally bound thereby.

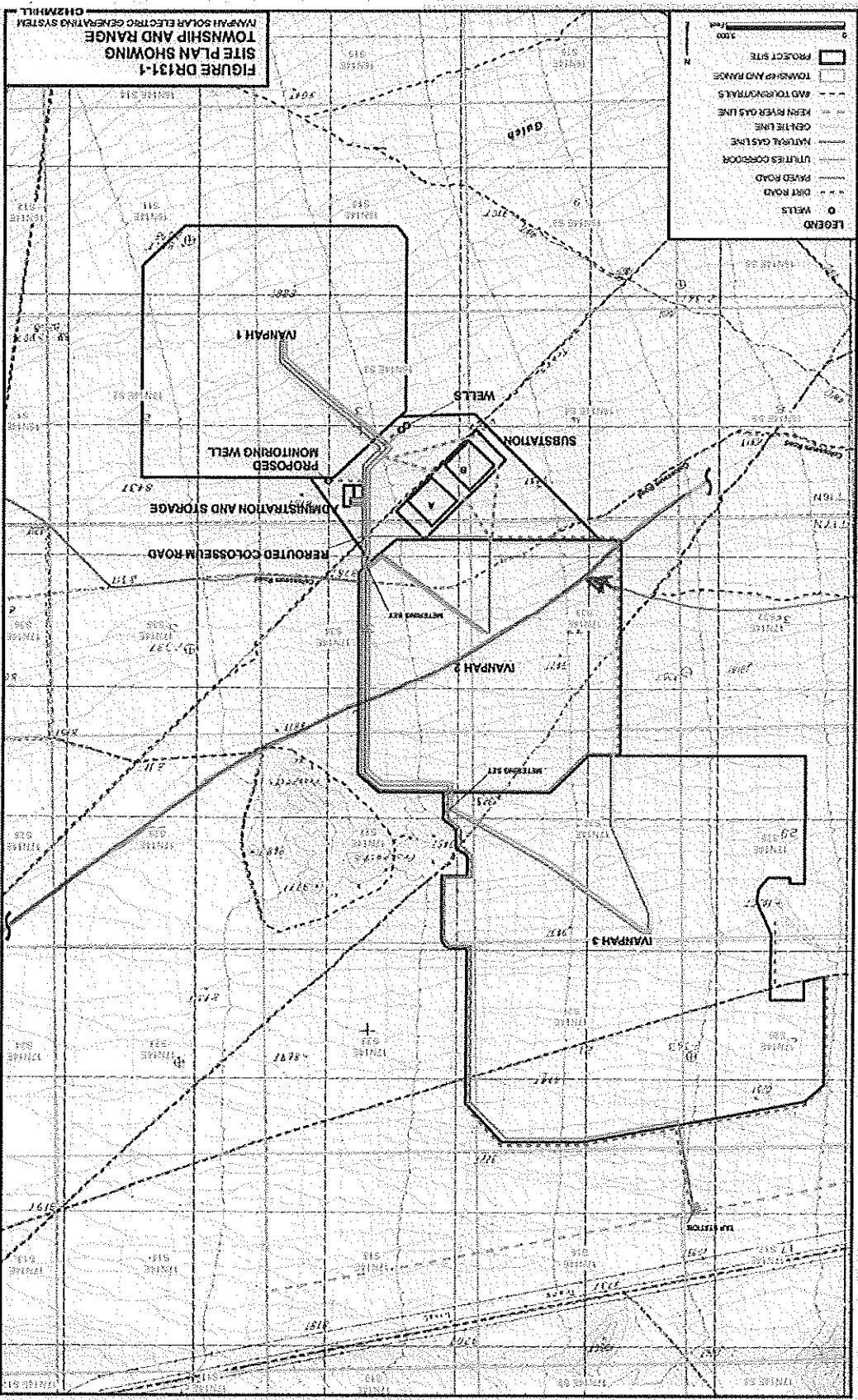
**BRIGHTSOURCE ENERGY, INC.**,  
a Delaware corporation

By:   
Name: TODD A STEWART  
Title: DIRECTOR, PROJECT DEVELOPMENT  
Date: May 21, 2009

**DESERTXPRESS ENTERPRISES, LLC**,  
a Nevada limited liability company

By:   
Name: Thomas J. Stone  
Title: President  
Date: May, 21, 2009

**EXHIBIT A: BOUNDARIES OF IVANPAH PROJECT**



*Desert Xpress proposed route*

*Desert Xpress*

**EXHIBIT B: MAP OF SEGMENT 4C**



