

DOCKETED

Docket Number:	23-OPT-02
Project Title:	Darden Clean Energy Project
TN #:	256457
Document Title:	Confidentiality Request - Community Benefits Agreements
Description:	Confidentiality request letter for the signed contract agreements associated with the Community Benefits Plan for the Darden Clean Energy Project
Filer:	Becky Moores
Organization:	Intersect Power
Submitter Role:	Applicant
Submission Date:	5/17/2024 3:05:41 PM
Docketed Date:	5/17/2024

May 10, 2024

California Energy Commission
1516 Ninth Street
Sacramento, California 95814

**RE: Docket No. 23-OPT-02 – Darden Clean Energy Project Opt-In Application
Application for Confidential Designation – Community Benefits Plan Agreements**

To whom it may concern:

Pursuant to California Code of Regulations, Title 20, Section 2505, IP Darden I, LLC and Affiliates c/o Intersect Power, LLC (“IP Darden”), as applicant for the Darden Clean Energy Project (“Project”), hereby submits an Application for Confidential Designation (“Application”) to the California Energy Commission (“CEC”) requesting that the CEC designate the information (“Donation Agreements”) IP Darden is submitting to the CEC with this Application as confidential on the basis that the individual executed agreements are designated as confidential by both parties.

To support the Application for Confidential Designation, the following information has been provided and is consistent with the information requested in the Application for Confidential Designation (Title 20 Cal. Code. Regs., § 2505 Et Seq.) Revised 4/2023.

1. Contact Information (20 CCR 1208.1.)

Applicant Name: IP Darden I, LLC and Affiliates c/o Intersect Power, LLC
Address: 9450 SW Gemini Drive, PMB #68743 Beaverton, Oregon 97008-7105
Proceeding Name: Darden Clean Energy Project
Docket Number: 23-OPT-02

2. Title, date, and description (including number of pages) of the information or data for which you request confidential designation. (20 CCR 1208.1.)

The following donation agreements between IP Darden I, LLC and the listed organization:

- Central California Foodbank, dated 2/16/2024, 6 pages
- Central California Asthma Collaborative, dated 2/7/2024, 5 pages
- Centro La Familia Advocacy Services, dated 1/31/2024, 6 pages
- Cornell University, dated 1/23/2024, 1 page
- Fresno County Rural Transit Agency, dated 3/29/2024, 5 pages
- Fresno Housing Education Corps, dated 1/18/2024, 6 pages
- Tree Fresno, dated 2/8/2024, 6 pages
- Westside Elementary School District #28C, dated 12/19/2023, 6 pages

3. Specify the part(s) of the information or data for which you request confidential designation. (If the data is in charts or spreadsheets, highlighting is sufficient.) (20 CCR 2505(a)(1)(B.))

The documents referenced in response 2 in their entirety.

- 4. State and justify the length of time the CEC should keep the information or data confidential. The term requested must be relevant to the stated basis for confidentiality. (20 CCR 2505(a)(1)(C.))**

It is requested that all documents referenced in response 2 be kept confidential indefinitely per the terms of the agreements. Request for confidentiality is justified due to the fact that each of the documents referenced in response 2 includes a confidentiality clause requiring both parties to the agreement to “keep in confidence the execution, terms and conditions as well as performance of the agreement.” The confidentiality provision included in the agreement is indefinite, and so it is requested that all documents referenced in response 2 be kept confidential indefinitely to ensure that IP Darden is not in violation of its contractual obligations.

- 5. State the provision(s) of the California Public Records Act or other law that allows the CEC to keep the information or data confidential and explain why the provision(s) apply to that material. (See Gov. Code, §§ 7920.000-7930.215.) (20 CCR (a)(1)(D.))**

Cal. Govt. Code § 6255(a) allows for withholding documents when the public interest served by not making the records public clearly outweighs the public interest served by their disclosure. In alignment with Cal. Govt. Code § 6255(a), all of the documents referenced in response 2 shall be kept confidential, as the public interest served by upholding the confidential designation of the documents referenced in response 2 outweighs the public interest served by their disclosure.

- 6. Discuss the public interest in nondisclosure of the record. If the record contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please also state how it would be lost, the value of the information to the applicant, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others (20 CCR (a)(1)(D.)).**

In the interest of maintaining the integrity and effectiveness of charitable activities, it is essential that donation agreements containing confidentiality clauses, such as all of the documents referenced in response 2, remain confidential. Public disclosure of such agreements may deter future parties from entering into such charitable agreements, who may prefer anonymity or need to avoid potential solicitation and undue pressure from other organizations, thereby significantly undermining the capacity of entities to give and receive crucial funding. Disclosing confidential donation agreements despite the confidentiality provisions contained therein could additionally undermine the trust parties place in the enforceability of privately negotiated and executed contracts. Thus, keeping these agreements confidential aligns with the public interest in fostering a robust philanthropic environment, and ensuring that parties to a contract which includes a confidentiality clause know that such confidentiality clause shall remain upheld for the duration of the agreement.

- 7. State whether the record may be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why. (20 CCR 2505(a)(1)(E.))**

The information may be disclosed if it is aggregated with other information. In fact, the information is aggregated and summarized in the Darden Community Benefits Plan document that has been submitted through CEC's online docket system and such aggregated information is available for public disclosure. The aggregated form of the information does not violate the terms of the confidentiality provisions included in all of the documents referenced in response 2.

8. State how the record is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred. (20 CCR 2505(a)(1)(F.))

The information contained within the document referenced in response 2 has not been disclosed to a person other than an employee or contractor(s) working on behalf of IP Darden, and only when such individual has executed a non-disclosure agreement, and the counterparty of the executed agreements.

Certification

I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge and I am authorized to make the application and certification on behalf of the applicant.

IP Darden I, LLC



By: Simon Ross, Chief Commercial Officer