**NAPA VALLEJO WASTE MANAGEMENT AUTHORITY**

**AGREEMENT NO. 2014-07**

**EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT**

This AGREEMENT is made and entered into this date of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2013 (“Effective Date”) by and among RealEnergy, LLC (DEVELOPER), and the Napa-Vallejo Waste Management Authority (NVWMA).

**RECITALS**

**WHEREAS**, NVWMA is the owner of the Devlin Road Transfer Station ("Facility") located at 889 Devlin Road, American Canyon, California; APN 057-090-080. The Facility accepts, processes, and recovers mixed municipal waste. Northern Recycling Operations & Waste Services, LLC ("Northern Recycling") is the contract operator of the Facility; and

**WHEREAS**, the DEVELOPER is a private company specializing in the development of renewable energy power plants and has submitted to NVWMAa preliminary proposal for the development at the Facility of an organic transfer station, where organic mixed waste received at the Facility would be separated from other mixed municipal waste, processed and transferred to the Napa Sanitation Wastewater Treatment Plant for conversion into energy producing biogas and other products (the "Project"); and

**WHEREAS**, the Project proposed by DEVELOPER at the Facility includes installation of municipal solid waste processing equipment and a solar photovoltaic system for production of electricity which would reduce NVWMA’s costs for solid waste disposal and energy consumption; and

**WHEREAS,** under Public Resources CodeSection 40059, NVWMA is broadly empowered to determine all aspects of local solid waste handling and the means of service to be provided for such handling, with or without competitive bidding; and

**WHEREAS,** one of the areas to be determined in the negotiations contemplated hereunder is whether a portion of the Project may qualify under the provisions of Energy Conservation Contracts at Chapter 3.2 of Division 5 of Title 1 of the California Government Code (commencing with Section 4217.10).

**NOW THEREFORE** the Parties agree to negotiate exclusively and in good faith to enter into a Ground Lease and Project Agreement upon the following terms and conditions:

1. Agreement to Negotiate Exclusively: Good Faith Negotiations.

NVWMA agrees that, during the Negotiation Period (as defined in Section 2 below) and provided that DEVELOPER is not in default of its obligations under this Agreement, NVWMA shall negotiate exclusively and in good faith with DEVELOPER with respect to the Project Agreement and Ground Lease to be entered into between NVWMA and DEVELOPER concerning the rights and obligations of the Parties respecting the development of the Facility with the Project. During the negotiation period, NVWMA shall not solicit or entertain offers or proposals from other parties concerning similar Projects at the Facility. This paragraph does not apply to Northern Recycling's participation in any negotiations, as the parties acknowledge that NVWMA has a Facility Operating Agreement with Northern Recycling with respect to the Facility's operations, and that the consent of Northern Recycling may be required prior to any execution of a Project Agreement and/or Ground Lease.

The Parties agree, in consideration of this Agreement, to negotiate in good faith with each other with respect to the proposed Project Agreement, Ground Lease, and necessary government approvals and to cooperate in the preparation thereof. The Parties shall provide each other with any information regarding the Facility or Project that may be reasonably requested by the other Party.

1. Period of Negotiation.

The Parties agree to negotiate in good faith for a period of three hundred sixty five (365) days from the Effective Date (“Negotiation Period”). If the Parties have not executed the Ground lease, Project Agreement, and obtained necessary government approvals by the end of the Negotiation Period, then this Agreement shall automatically terminate, provided, however, that the Parties may mutually agree to extend the term of this Agreement for an additional period of up to six months, subject to NVWMA Board approvals. If the Parties cannot agree upon such an extension, this Agreement shall automatically terminate upon the conclusion of the Negotiation Period.

This Agreement may also be terminated if the Parties agree in writing that a successful consummation of the negotiations is impossible.

Upon termination of this Agreement, any interest that DEVELOPER may have hereunder shall cease.

1. Test and Surveys.

During the Negotiation Period, DEVELOPER shall conduct such tests, surveys, and other analyses as the DEVELOPER deems necessary to determine the feasibility of designing, constructing, leasing, and financing the Project and shall complete such tests, surveys, and other analyses as promptly as possible within the Negotiation Period. For these purposes, NVWMA shall provide to DEVELOPER, its agents, and representatives, the right to enter onto the Site and to conduct such tests, surveys, and other procedures desired by DEVELOPER (“Tests”). However, any such tests or surveys shall not interfere with operations performed by Northern Recycling at the Facility, and shall first be approved in writing by both Northern Recycling and NVWMA. Upon the conclusion of all such tests, surveys, and other analyses DEVELOPER shall return the Site to its condition prior to such tests or surveys, unless otherwise agreed to in writing by NVWMA.

**4. Project Agreement and Ground Lease Negotiations.**

The Project Agreement and Ground Lease shall include without limitation all of the following DEVELOPER obligations and restrictions:

* 1. (1) Design of the Project, which shall be subject to approval of NVWMA and compliance with all requirements and regulations of the County of Napa and other public agencies having jurisdiction, (2) Scope of Development, (3) Schedules of Performance and (4) other documents regulating the progress and development of the Project. If negotiations result in a Project Agreement, that Project Agreement becomes final only upon approval by the NVWMA Board of Directors.
  2. Supervision of all improvements comprising the Project, the completion of which shall be (1) overseen by DEVELOPER upon terms mutually agreeable to the Parties, and (2) free of mechanics’ liens and liens other than those respecting the financing of the Project and agreed to by NVWMA.
  3. Operation and maintenance of the Project, including the right of NVWMA and its member jurisdictions to purchase the power generated on such terms as the parties may agree to.
  4. Reasonable restrictions on transfer or assignment of (1) the Project, (2) DEVELOPER’s interest in the Project Agreement and Ground Lease and (3) change in controlling ownership of DEVELOPER.
  5. In the Ground Lease, the (1) term (2) lease area description (3)  amount and schedule of rents or equivalent payments by DEVELOPER to NVWMA and, (4)  all other essential terms of a Ground Lease.
  6. Reasonable security to assure DEVELOPER’s performance under the Project Agreement.

1. Development Goals of NVWMA.
   1. Continued use of the Facility consistent with all applicable laws.
   2. Reduction in landfill disposal of municipal solid waste

(c) Reduction of the NVWMA’s carbon footprint;

(d) Generation of electrical power used by NVWMA from clean energy sources;

(e) Creation of Green Collar jobs

(f) Generation of new revenues for NVWMA.

1. Topics for Negotiation.

The topics for negotiation shall include, among other things: (i) DEVELOPER’s right to lease a portion of the Facility site; (ii) method of calculating and paying Ground Lease rents or equivalent payments; (iii) the terms of the proposed Ground Lease including necessary covenants, conditions and restrictions affecting the Facility; (iv) air rights use; (v) management of the Project; (vi) the schedule of performance; (vii) availability of the Facility to the DEVELOPER; (viii) proposed land uses; (ix) layout or proposed Project improvements; (x) preliminary design and architectural concepts and plans; (xi) aesthetic considerations; (xii) the quality and type of construction; (xiii) environmental responsibilities; (xiv) the DEVELOPER’s responsibility to obtain environmental clearances, licenses and other entitlements, and project financing; and (xv)  any other considerations necessary to fully implement the proposed Project in a timely fashion.

1. Broker’s Fees.

The Parties represent and warrant to each other that no broker or finder has been engaged or is in anyway connected with the transactions contemplated by this Agreement. In the event any claim for brokers’ or finders’ fees is made in connection with the transactions contemplated by this Agreement, the Party upon whose statement, representation or agreement the claim is made shall indemnify, save harmless and defend the other Party from and against such claims.

1. Assignment.

Developer shall not assign any interest in this Agreement without the express written consent of NVWMA, which consent shall not be unreasonably withheld. As a condition to any proposed assignment of this Agreement, DEVELOPER shall be required to make full disclosure to NVWMA of the principals, officers, stockholders, partners, etc., and all other pertinent information concerning the assignee of DEVELOPER and its associates. NVWMA shall not assess a fee for its approval of any assignment

Nothing contained herein shall prohibit or in any way limit DEVELOPER’s unfettered choice (and replacement) of such consultants and other third parties as DEVELOPER shall designate from time to time to perform services relating to the Project.

1. NVWMA Obligations.

During the Term of this Agreement, NVWMA shall deliver, within 30 days of receipt of written request thereof, any existing NVWMA-owned information, studies, reports, site and construction plans or other documents which DEVELOPER may reasonably request to facilitate the Project design at cost to the DEVELOPER. The Parties shall cooperate to ensure timely review and revision of any DEVELOPER documents or plans. In addition, NVWMA shall provide to DEVELOPER access to NVWMA’s design staff personnel familiar with the Facility and NVWMA’s third party consultants and engineers familiar with the Facility for the purpose of aiding DEVELOPER in understanding the physical aspects of the Facility. DEVELOPER shall bear all costs that may arise associated with making NVWMA’s third party consultants and engineers available to DEVELOPER. Any studies, plans, or other documents made available to DEVELOPER by NVWMA shall be held in confidence, may not be disclosed to third parties without the consent of NVWMA, and shall be returned to NVWMA upon expiration or termination of this Agreement.

This Agreement is an agreement to enter into a period of exclusive negotiations according to the terms hereof. NVWMA and DEVELOPER each expressly reserves the right to decline to enter into a Project Agreement and/or a Ground Lease in the event the Parties fail to negotiate an agreement to the mutual satisfaction of NVWMA and DEVELOPER. Except as expressly provided in this Agreement, NVWMA and DEVELOPER shall have no obligations or duties hereunder and shall have no liability whatsoever in the event the Parties fail to timely execute a Project Agreement and /or Ground Lease. NVWMA agrees to cooperate with DEVELOPER in securing the necessary approvals for the Project from governmental agencies having jurisdiction over the Project. DEVELOPER acknowledges and agrees that NVWMA has not agreed to fund, subsidize or otherwise financially contribute in any manner toward the development of the Project.

By its execution of this Agreement, NVWMA is not committing to or agreeing to undertake: (i) disposition of land to DEVELOPER; or (ii) any other acts or activities requiring the subsequent independent exercise of discretion by NVWMA. The Parties recognize that one or more of the conditions to DEVELOPER’s proposal set forth herein may fail to be met as a result of subsequent studies, reviews and proceedings invoking the excercise of discretion by NVWMA or any public agency having regulatory jurisdiction. DEVELOPER further expressly acknowledges that NVWMA has a Facility Operating Agreement with Northern Recycling with respect to the Facility's operations, and that the consent of Northern Recycling may be required prior to any execution of a Project Agreement and/or Ground Lease. Further, it may be required that Northern Recycling be a party to any Project Agreement and/or Ground Lease.

DEVELOPER shall bear all costs to be incurred as a result of compliance with the California Environmental Quality Act and the National Environmental Protection Act, including, but not limited to, preparation of an environmental impact report, if required, or any other required studies or documents. DEVELOPER shall also indemnify NVWMA and bear all costs, expenses, and attorneys fees associated with responding to or defending against claims that may be filed against itself, or NVWMA in connection with defending such environmental studies or documents from challenge by third parties.

1. Non-Liability of NVWMA Officials and Employees.

Without limiting the provisions set forth herein, no member, official, representative, director, attorney, or employee of NVWMA shall be personally liable to DEVELOPER or any successor in interest, in the event of any default or breach by NVWMA of any obligations under the terms of this Agreement, or of any amount which may become due to DEVELOPER or to its successor under the terms of this Agreement.

1. Plans, Reports, Studies and Investigation.

Upon request by NVWMA, DEVELOPER shall provide NVWMA, without cost or expense to NVWMA, copies of all plans, reports, studies, or investigations (collectively, “Plans”) prepared by or on behalf of DEVELOPER which the DEVELOPER owns or has the copyrights to with respect to the Facility and the Project. All Plans shall be prepared at DEVELOPER’s sole cost and expense, and DEVELOPER agrees to indemnify, defend and hold harmless NVWMA and their representatives, employees, officials, directors, attorneys, successors and assigns (collectively, “Representatives”) from any losses, liability, claims, causes of action, injury or expense, including without limitation, reasonable attorneys’ fees and costs (collectively, “Loss and Liabilities”) arising from or in any way related solely to the cost of preparation of such Plans. Nothing contained herein shall be deemed a representation or warranty by DEVELOPER of the accuracy of any information contained in such Plans.

1. DEVELOPER’s Responsibilities.

Without limiting any other provision of this Agreement, during the period of negotiations hereunder, DEVELOPER, at its sole cost and expense, shall prepare and submit the following documents and perform the following acts all in furtherance of the negotiation process:

* 1. All documents and other materials that NVWMA and all agencies having regulatory jurisdiction will require for planning and design approval for the Project. DEVELOPER shall meet with representatives of NVWMA to review and reach a clear understanding of the planning and design criteria required by these and other agencies.

(b) DEVELOPER shall, no later than 90 days before termination of the Negotiation Period, provide NVWMA with all documents reasonably necessary to determine the feasibility and details of the project.

12. Entire Agreement: Attorneys’ fees.

This Agreement represents the entire agreement of the Parties with respect to the matters set forth herein. This Agreement may not be amended except in writing signed by all of the Parties hereunder. If any Party brings an action or files a proceeding in connection with the enforcement of its respective rights or as a consequence of any breach by another Party of its obligations hereunder, then the prevailing Party in such action or proceeding shall be entitled to have its reasonable attorney’s fees and costs paid by the losing Party.

1. Notices.

All notices required or permitted hereunder shall be delivered in person, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested to such Party at its address shown below, or to any other place designated in writing by such Party.

NVWMA: Napa-Vallejo Waste Management Authority

Executive Director

1195 Third St. Suite B-10

Napa, CA 94559-3082

DEVELOPER: RealEnergy , LLC

Mr. Kevin Best

Chief Executive Officer

1190 Airport Road

Napa, CA 94558

Any such notice shall be deemed received upon delivery, if delivered personally, the next business day after delivery by a courier, if delivered by courier, and three (3) days after deposit into the United States Mail, if delivered by registered or certified mail.

IN WITNESS WHEREOF, NVWMA and DEVELOPER have signed this Agreement as of the dates set forth below.

**NAPA-VALLEJO WASTE MANAGEMENT AUTHORITY**:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:

Hermie Sunga, Chair NVWMA Board

"NVWMA"

APPROVED AS TO FORM:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:

Robert Paul, Attorney for NVWMA

**REALENERGY, LLC**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:

Kevin Best, Chief Executive Officer

"DEVELOPER"