



AGENDA

Regular Meeting of the Board of Directors of San Diego Community Power (SDCP)

August 24, 2023
5:00 p.m.

City of San Diego Metropolitan Operations Complex (MOC II) Auditorium
9192 Topaz Way, San Diego, CA 92123

Alternate location:

Courtyard by Marriott Oxnard Ventura
600 Esplande Drive, Oxnard, CA 93030

The meeting will be held in person at the above date, time and location. Board of Directors Members and members of the public may attend in person. Under certain circumstances, Directors may also attend and participate in the meeting virtually pursuant to the Brown Act (Gov. Code § 54953). As a convenience to the public, SDCP provides a call-in option and internet-based option for members of the public to virtually observe and provide public comments at its meetings. Additional details on in-person and virtual public participation are below. Please note that, in the event of a technical issue causing a disruption in the call-in option or internet-based option, the meeting will continue unless otherwise required by law, such as when a Board Member is attending the meeting virtually pursuant to certain provisions of the Brown Act.

Note: Any member of the public may provide comments to the Board of Directors on any agenda item. When providing comments to the Board, it is requested that you provide your name and city of residence for the record. Commenters are requested to address their comments to the Board of Directors as a whole through the Chair. Comments may be provided in one of the following manners:

1. Providing Oral Comments During Meeting. Anyone attending in person desiring to address the Board of Directors is asked to fill out a speaker's slip and present it to the Clerk of the Board or the Secretary. To provide remote comments during the meeting, join the Zoom meeting by computer, mobile phone, or dial-in number. On Zoom video conference by computer or mobile phone, use the "Raise Hand" feature. This will notify the moderator that you wish to speak during a specific item on the agenda or during non-agenda Public Comment. Members of the public will not be shown on video but will be able to speak when called upon. If joining the meeting using the Zoom dial-in number, you can raise your hand by pressing *9. Comments will be limited to three (3) minutes.
2. Written Comments. Written public comments must be submitted prior to the start of the meeting by using this [Web Commnt Form](#). Please indicate a specific agenda item when

submitting your comment. All written comments received prior to the meeting will be provided to the Board members in writing. In the discretion of the Chair, the first ten (10) submitted comments shall be stated into the record of the meeting. Comments read at the meeting will be limited to the first 400 words. Comments received after the start of the meeting will be collected, sent to the Board members in writing, and be part of the public record.

If you have anything that you wish to be distributed to the Board, please provide it via info@sdcommunitypower.org and it will be distributed to the Members.

The public may participate using the following remote options:

Teleconference Meeting Webinar <https://zoom.us/j/94794075133>

Telephone (Audio Only) (669) 900-6833 or (346) 248-7799 | Webinar ID: 947 9407 5133

WELCOME

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

SPECIAL PRESENTATIONS AND INTRODUCTIONS

ITEMS TO BE ADDED, WITHDRAWN, OR REORDERED ON THE AGENDA

PUBLIC COMMENTS

Opportunity for members of the public to address the Board on any items not on the agenda but within the jurisdiction of the Board. Members of the public may provide a comment in either manner described above.

CONSENT CALENDAR

All matters are approved by one motion without discussion unless a member of the Board of Directors requests a specific item to be removed from the Consent Calendar for discussion. A member of the public may comment on any item on the Consent Calendar in either manner described above.

- 1. Approval of July 27, 2023 Meeting Minutes**
- 2. Approval of Member Agency Grant Program Policy**
- 3. Approval of First Amended and Restated Professional Services Agreement for a contingency fee of 19% with Financial Credit Network (FCN) for debt collection services for residential customers through April 30, 2024.**
- 4. Approval of First Amendment to the Professional Services Agreement Between San Diego Community Power and Tenaska Power Services Co for Scheduling Coordinator Services.**

REGULAR AGENDA

The following items call for discussion or action by the Board of Directors. The Board may discuss and/or take action on any item listed below if the Board is so inclined.

5. 2022 Power Source Disclosure Program Annual Reports and Power Content Label

Recommendation: Adopt Resolution 2023-XX approving the submission and attesting to the accuracy of SDCP's 2022 Power Source Disclosure annual reports for PowerOn and Power100 and the 2022 Power Content Label

6. Approval of Resource Adequacy Agreement with EnerSmart Chula Vista BESS, LLC

Recommendation: Approve the proposed Resource Adequacy Agreement with EnerSmart Chula Vista BESS, LLC for purchase of 10 years of 3 MW of Resource Adequacy and authorize the CEO to execute the agreement.

DIRECTOR INITIATED ITEM

(Consideration of a Request by Chair LaCava)

7. Discussion on Outsourcing General Counsel versus Options for In-House General Counsel

Recommendation: Provide feedback to the Board Chair and SDCP Staff on whether the Board of Directors should continue outsourcing General Counsel or move to pursue in-house General Counsel and whether to request staff to analyze options and come back with the recommendation to the Board of Directors.

REPORTS BY CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL

SDCP Management and General Counsel may briefly provide information to the Board and the public. The Board may engage in discussion if the specific subject matter of the report is identified below, but the Board may not take any action other than to place the matter on a future agenda. Otherwise, there is to be no discussion or action taken unless authorized by law.

DIRECTOR COMMENTS

Board Members may briefly provide information to other members of the Board and the public, ask questions of staff, request an item to be placed on a future agenda, or report on conferences, events, or activities related to SDCP business. There is to be no discussion or action taken on comments made by Directors unless authorized by law.

ADJOURNMENT

Compliance with the Americans with Disabilities Act

SDCP Board of Directors meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a modification or accommodation, including

auxiliary aids or services, in order to participate in the public meeting may contact (888) 382-0169 or info@sdcommunitypower.org. Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

Availability of Board Documents

Copies of the agenda and agenda packet are available at <https://sdcommunitypower.org/resources/meeting-notes/>. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Members prior to or during the Board meeting are available for public review as required by law. Public records, including agenda-related documents, can be requested electronically at info@sdcommunitypower.org or by mail to SDCP, PO BOX 12716, San Diego, CA 92112. The documents may also be posted at the above website. Such public records are also available for inspection, by appointment, at San Diego Community Power, 2488 Historic Decatur Road, Suite 250, San Diego, CA 92106. Please contact info@sdcommunitypower.org to arrange an appointment.



**SAN DIEGO COMMUNITY POWER (SDCP)
BOARD OF DIRECTORS**

City of San Diego Metropolitan Operations Complex (MOC II) Auditorium
9192 Topaz Way, San Diego, CA 92123

MINUTES
July 27, 2023

The Board minutes are prepared and ordered to correspond to the Board Agenda. Agenda Items can be taken out of order during the meeting.

The Agenda Items were considered in the order presented.

WELCOME

CALL TO ORDER

Chair LaCava (City of San Diego) called the SDCP Board of Directors meeting to order at 5:04 p.m.

ROLL CALL

PRESENT: Chair LaCava (City of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), and Director Parent (La Mesa)

ABSENT: Vice Chair Lawson-Remer (County of San Diego), Director Yamane (National City)

Also Present: Chief Executive Officer ("CEO") Burns, General Counsel Norvell, Executive Assistant to the Chief Executive Officer/ Board Clerk Isley

PLEDGE OF ALLEGIANCE

Chair LaCava (City of San Diego) led the Pledge of Allegiance followed by a Land Acknowledgment honoring the original inhabitants of this land—the Kumeyaay.

SPECIAL PRESENTATIONS AND INTRODUCTIONS

Chair LaCava (San Diego) introduced the following new SDCP staff members:

Aisha Cissna, Senior Policy Manager

Renata Halls-Gordon, Temporary Administrative Assistant

Chair LaCava (San Diego) thanked the following outgoing Community Advisory Committee members:

Eddie Price, Chair

Aida Castañeda, Vice-Chair

Anna Webb, Secretary

Lea Nepomuceno, CAC Member

Chair LaCava (San Diego) welcomed the following new Community Advisory Committee members:

Matthew Vasilakis, Chair

David Harris, Vice-Chair

Lauren Cazares, Secretary

ITEMS TO BE ADDED, WITHDRAWN, OR REORDERED ON THE AGENDA

There were no items added, withdrawn, or reordered on the agenda.

PUBLIC COMMENTS

Dr. Peterson Anderson, Community Advisory Committee Member inquired about Power 100, mentioned his own transfer difficulty, and requested staff to investigate its accuracy.

Sonja Robinson spoke in support of the energy equity center at Valencia Park.

CONSENT CALENDAR

(Items 1 through 10)

1. Approval of April 21, 2023, April 27, 2023, May 25, 2023, June 22, 2023, Meeting Minutes

Approved.

2. Receive and File Treasurer's Report for Period Ending May 31, 2023

Received and filed.

3. Receive and File Update on Power Services

Received and filed.

4. Receive and File Update on Human Resources

Received and filed.

5. Receive and File Update on Customer Operations

Received and filed.

6. Receive and File Update on Marketing and Public Relations

Received and filed.

7. Receive and File Update on Community Advisory Committee

Received and filed.

8. Approval of Second Amendment to Professional Services Agreement with Pimenti and Brinker for up to \$80,400 for financial audit services in FY 2023-24

Approved.

9. Approval of Amended and Restated Engagement Letter with Keyes and Fox LLP for up to \$400,000 for Legal Services for Power Procurement.

Approved.

10. Approval of Member Agency Grant Program Policy

Approved.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Hinze (Encinitas), to approve Consent Calendar Items 1 through 10. The motion carried by the following vote:

Vote: 5-0

Yes: Chair LaCava (City of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), and Director Parent (La Mesa)
No: None
Abstained: None
Absent: Vice Chair Lawson-Remer (County of San Diego), Director Yamane (National City)

REGULAR AGENDA

11. Update on Regulatory and Legislative Affairs

Tim Lindl, Partner-Keys & Fox gave a presentation on SDG&E Regulatory Matter and gave an overview on how ratemaking impacts the PCIA.

Public Comments:

Lane Sharman spoke in support of thermal energy batteries versus electro-chemical batteries.

Following Board questions and comments, no action was taken.

12. Approval of First Amendment to Data Management Agreement with Calpine Energy Solutions, LLC for up to \$300,000 for Peak Load Reduction Pilot Services

Jack Clark, Chief Operating Officer provided a PowerPoint presentation on Peak Load Reduction Pilot Background.

Board questions and comments ensued.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Parent (La Mesa) for approval of the First Amendment to Data Management Agreement with Calpine Energy Solutions, LLC for up to \$300,000 for Peak Load Reduction Pilot Services. The motion carried by the following vote:

Vote: 5-0

Yes: Chair LaCava (City of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), and Director Parent (La Mesa)

No: None

Abstained: None

Absent: Vice Chair Lawson-Remer (County of San Diego), Director Yamane (National City)

13. Approval of the Language Access Policy

Carly Newman, Senior Account Services Analyst provided a PowerPoint presentation on the Language Access Program Policy's purpose and background.

Board questions and comments ensued.

ACTION: Motioned by Director Hinze (Encinitas) and seconded by Director Aguirre (Imperial Beach) to approve the Language Access Policy with the following two amendment suggestions by Director Hinze: **1.)** Rewording the following sentence on page 1 under **A. PURPOSE** of the policy from "To establish organizational-wide procedures for providing information and services directly to San Diego Community Power's (SDCP) communities in a way that makes them accessible to persons who are not proficient in the English language" to change the last part of the sentence to "to persons who are proficient in a language other than English" **2.)** On page 2, under **2. Verbal Interpretation** (Section D.2.b.), the highlighted section was included to accommodate Director Hinze's suggestion: b. During regularly scheduled Board of Directors and other publicly noticed meetings, verbal interpretation services may be made available upon request to the Clerk of the Board within at least five (5) business days prior to the meeting. **SDCP will attempt to accommodate any requests made less than 5 days.** The motion carried by the following vote:

Vote: 5-0

Yes: Chair LaCava (City of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa)
No: None
Abstained: None
Absent: Vice Chair Lawson-Remer (County of San Diego), Director Yamane (National City)

14. Approval of Default Service Change Policy

Lucas Utouh, Director of Data Analytics & Account services provided a PowerPoint presentation on the Default Service Change Policy's purpose, objectives, and highlights.

Board questions and comments ensued.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Parent (La Mesa) to approve the Default Services Change Policy. The motion carried by the following vote:

Vote: 5-0

Yes: Chair LaCava (City of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), and Director Parent (La Mesa)
No: None
Abstained: None
Absent: Vice Chair Lawson-Remer (County of San Diego), Director Yamane (National City)

15. Update on Quarterly Report for Community Advisory Committee

Xiomalys Crespo, Community Engagement Manager provided an update on the quarterly report for April through June 2023 for the CAC.

Following Board questions and comments, no action was taken.

REPORTS BY CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL

CEO Burns reported on SDCP's ongoing efforts and recent activities and events.

DIRECTOR COMMENTS

Chair LaCava (City of San Diego) gave updates on upcoming items scheduled for the August board meeting.

ADJOURNMENT

Chair LaCava (City of San Diego) adjourned the meeting at 6:14 p.m.

Kimberly Isley, Clerk of the Board

Prepared by:
Sandra Vences, Deputy Clerk

SAN DIEGO COMMUNITY POWER

Staff Report – Item 2

To: San Diego Community Power Board of Directors

From: Colin Santulli, Director of Programs
Alyson Scurlock, Program Associate

Subject: Approve the Member Agency Grant Program Policy

Date: August 24, 2023

RECOMMENDATION

Approve the Member Agency Grant Program Policy.

BACKGROUND

The San Diego Community Power (SDCP) Board of Directors (Board) approved SDCP's FY 23-24 budget on June 22, 2023, which included the creation of a member agency grant program as a component of the Programs Department budget. SDCP staff are now seeking approval of the Member Agency Grant Program Policy to delegate authority to the Chief Executive Officer to design and implement the program.

DISCUSSION

Overview

SDCP's Member Agency Grant Program (Program) would aim to support SDCP member agencies' climate action goals and initiatives such as projects or programs that promote clean energy, reduce carbon emissions, support climate equity, and advance local economic development. Example projects or programs can include, but are not limited to:

- Climate equity analyses and engagement
- Identification of Communities of Concern within member agencies
- Pilot projects (e.g., air quality monitors, appliance electrification, solar)
- Climate Action Implementation Plans
- Electrification cost/feasibility studies
- Municipal distributed energy resources (DER) project feasibility studies

Program Structure and Process

Current SDCP member agencies will be eligible to apply for a non-competitive grant, expected to be \$50,000 per member agency for the FY 23-24 Program. Grant funding will

be provided directly to member agencies to implement a project or via services such as technical assistance and outreach and engagement.

Next Steps

SDCP staff anticipate launching the Program in Q3-Q4 CY 2023. Next steps include developing program materials and working with member agency staff to identify eligible projects to use the funding for. Staff may seek support for administration of the Program and distribution of grant funds through a qualified consultant.

COMMITTEE REVIEW

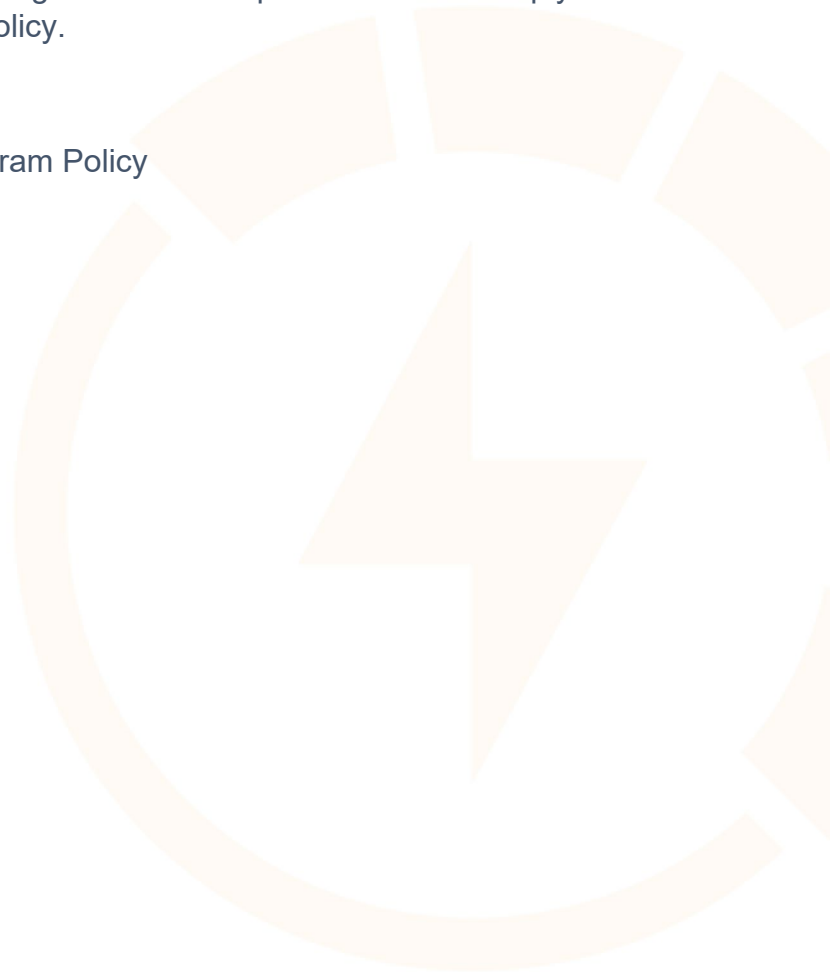
SDCP staff plan on providing this update to the Community Advisory Committee at their next meeting.

FISCAL IMPACT

Funding to create a member agency grant program was approved in the FY 23-24 budget as part of the Programs Department budget. Staff expect no more than \$350,000 to be allocated to the Program in FY 23-24. All Program-related expenditures will comply with the SDCP Board-approved Procurement Policy.

ATTACHMENTS

Attachment A: Member Agency Grant Program Policy



Policy Title	Member Agency Grant Program Policy
Effective Date	Original: 8/24/2023

Member Agency Grant Program Policy

A. PURPOSE

The purpose of this Member Agency Grant Program Policy (Policy) is to provide authority to the San Diego Community Power (SDCP) Chief Executive Officer (CEO), or designee, to design and approve the Member Agency Grant Program (Program) guidelines, implement the Program, develop required contracts and grantmaking, and make minor modifications to the guidelines, where necessary.

B. GRANT PROGRAM GOALS

The Program aims to support SDCP member agencies' climate action goals and initiatives such as projects or programs that promote clean energy, reduce carbon emissions, support climate equity, and advance local economic development.

C. GRANT PROGRAM STRUCTURE AND PROCESS

The following sections outline the overall Program structure and process.

Eligibility

Applicants must be a current SDCP member agency.

Grant Criteria

Grants will be non-competitive and awarded dependent on the proposed projects' alignment with the Program goals. Grant funding will be provided directly to member agencies or via services including technical assistance and outreach and engagement. Services supported by grants may be coordinated by a program administrator.

Grantee Reporting

Grantees will provide final reports to SDCP summarizing project outcomes and other project metrics as defined in an executed grant agreement with SDCP or the program administrator.

Timeline

Grant funds will be expended by grantees no later than 12 months from award date.

Grantee Compliance



Grantees will be required to comply with all applicable federal, state, and local laws, rules, and regulations, which may include provisions of the California Labor Code relating to the payment of prevailing wages and the performance of other requirements on certain public works and maintenance projects.

D. GRANT FUNDING

This Policy does not explicitly authorize procurement by SDCP as the related Program does not purchase a good or service, with the exception of a potential program administrator to support the distribution of grant funds. All Program-related expenditures will comply with the SDCP Board-approved Procurement Policy.

The total annual approved Program budget will be divided evenly among member agencies. Staff will inform the Board of any grant disbursements related to the Program.

E. TERRITORY

SDCP's service area.

F. AUTHORITY DELEGATION

This Policy authorizes the CEO, or designee, to design and approve the Program guidelines, implement the Program, develop required contracts and grantmaking, and make minor modifications to the guidelines, where necessary.



SAN DIEGO COMMUNITY POWER Staff Report – Item 3

To: San Diego Community Power Board of Directors

From: Lucas Utouh, Director of Data Analytics & Account Services

Via: Karin Burns, Chief Executive Officer

Subject: Approval of First Amended and Restated Professional Services Agreement for Debt Collection Services with Financial Credit Network (FCN) to Include Residential Customers

Date: August 24, 2023

RECOMMENDATION

Approve First Amended and Restated Professional Services Agreement for debt collection services with Financial Credit Network (FCN) to also include residential customers.

BACKGROUND

In December, 2021 the San Diego Community Power (SDCP) Board of Directors adopted a delinquency policy for non-residential customers which outlined the criteria and steps to reduce bad-debt and provide a better experience for our customers. In a tight economic and regulatory framework, load serving entities, such as SDCP, need to minimize and mitigate bad debts for their overall long term financial viability, resiliency and competitiveness.

SDCP issued a Request for Proposals for Debt Collection Services on January 26, 2022 and received three qualified responses. After a thorough competitive grading and interview process, Financial Credit Network (FCN) was selected for award of the contract.

In June, 2023 the San Diego Community Power (SDCP) Board of Directors adopted an expanded collections and delinquent accounts handling policy that covered not only non-residential customers but also residential customers. This policy established a delinquent accounts, late payment notification, collections and write off policy that provides the framework for San Diego Community Power (SDCP) Staff and Back Office Service provider to better serve our customers and set clear expectations on the handling of past due customer charges for both Residential and Non-Residential customers. As part of this expanded collections and delinquent accounts handling policy approval by the Board of Directors, section 3 of this policy provided approval for staff to expand the scope of service with SDCP's collections agency to cover residential customers, hence; the need

for this first amended and restated professional services agreement with Financial Credit Network (FCN). Staff has performed the due diligence by inquiring with the rest of the CCAs in the State of California and most of them have collection agencies/vendors that charge a contingency fee for residential customers that range from 20%-25%.

ANALYSIS AND DISCUSSION

Financial Credit Network (FCN) is a mid-sized collection agency located out of Visalia, California. With over 50 years of experience, FCN has served numerous utility clients and has experience working with electric utilities like SDG&E and Community Choice Aggregators, including Clean Energy Alliance.

FCN utilizes a variety of collection methodologies and technologies including *skip tracing* and *dialer advantage* while focusing on maintaining effective and empathetic customer service. FCN has bi-lingual Spanish speaking staff to assist consumers, as well as access to a multi-language program to make sure consumers can use their language of origin if requested.

Per the terms of SDCP's delinquency policy, FCN will not charge interest on the balance of consumer accounts and will not add on any separate fees to the consumer. Consumer payments can be made through a variety of methods including by mail, credit card, ACH, MoneyGram or directly through the FCN website.

For accounts that have outstanding balances of \$750 or more, FCN may, after receiving SDCP approval, take legal action in efforts to recover outstanding balances.

FCN offers a contingency-based fee structure for its collection services. Simply, if FCN is unable to collect, they are not owed anything by SDCP. SDCP and FCN agreed to a negotiated contingency fee structure of 22% for primary placements and 28% for legal action/forwarding placements for **Non-residential** customers as well as 19% contingency fee for primary placements and 22% for legal action/forwarding placements for **Residential** customers for a period of one year and we'll reassess the contingency fee structure accordingly.

FCN meets SDCP's data privacy requirements and has a robust data management system. FCN maintains an SFTP server dedicated to clients who wish to electronically transmit files to their office and also supports PGP encryption for added security.

Critically, for SDCP, FCN also emphasizes quality assurance through three elements: side-by-side monitoring, silent monitoring, and file review. SDCP would be able to audit customer call interactions with FCN to ensure that they are meeting our high standards of customer service.

COMMITTEE REVIEW

N/A



FISCAL IMPACT

FCN's compensation is based on contingency fees charged on recovered debts. FCN's compensation schedule is outlined below:

	Description:	Contingency Fee
Non-Residential Customers	Primary Placements	22%
	Legal Action/Forwarding on Primary Placements	28%

Residential Customers	Primary Placements	19%
	Legal Action/Forwarding on Primary Placements	22%

ATTACHMENTS

Attachment A: First Amended and Restated Professional Services Agreement with Financial Credit Network for Debt Collection Services

Attachment B: SDCP Collections and Delinquent Accounts Handling Policy



**FIRST AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT
BETWEEN SAN DIEGO COMMUNITY POWER AND FINANCIAL CREDIT NETWORK,
INC. (FCN)**

THIS FIRST AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT (“**Agreement**”) is entered into as of this August 24, 2023 by and between SAN DIEGO COMMUNITY POWER, a California joint powers authority (“**SDCP**”) and Financial Credit Network, Inc. (“**Consultant**”). SDCP and Consultant are sometimes individually referred to herein as the “**Party**” and collectively as the “**Parties**.”

RECITALS

A. The Parties entered into that certain original Professional Services Agreement, dated April, 28, 2022 (“**Original Agreement**”) under which Consultant would provide Debt Collection Services for non-residential customers. The Original Agreement will be replaced with this Agreement as of the effective date of this Agreement.

B. Consultant desires to perform and assume responsibility for the provision of Debt Collection Services for both non-residential customers *and* residential customers on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing **Debt Collection Services**, is licensed and/or authorized to continue to operate in California pending approval of application to continue offering debt collection services by the Department of Financial Protection and Innovation (DFPI), and is familiar with the plans of SDCP.

B. SDCP desires to engage Consultant to render such professional services for the debt collection services for both non-residential and residential customers (“**Project**”) as set forth in this Agreement.

AGREEMENT

1. Scope of Services and Term.

1.1 General Scope of Services. Consultant promises and agrees to furnish to SDCP all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the debt collection services for non-residential and residential customers necessary for the Project (“**Services**”). The Services are more particularly described in and shall be performed in accordance with Exhibit A attached hereto, and which are stated in the proposal to SDCP. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

1.2 Term. The term of this Agreement shall be from **April 28, 2022** to **April 30, 2024**; unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

2. Responsibilities of Consultant.

2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. SDCP retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of SDCP and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Scope and Schedule of Services set forth in Exhibit A attached hereto. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, SDCP shall respond to Consultant's submittals in a timely manner. Upon request of SDCP, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of SDCP.

2.4 Substitution of Key Personnel. Consultant has represented to SDCP that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of SDCP. In the event that SDCP and Consultant cannot agree as to the substitution of key personnel, SDCP shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to SDCP, or who are determined by the SDCP to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the SDCP. The key personnel for performance of this Agreement are as follows:

Kris Davisson, Vice President

2.5 SDCP's Representative. SDCP hereby designates its **Director of Data Analytics and Account Services**, or his or her designee, to act as its representative for the performance of this Agreement ("SDCP's Representative"). SDCP's Representative shall have the power to act on behalf of SDCP for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than SDCP's Representative, or designee.

2.6 Consultant's Representative. Consultant hereby designates **Kris Davisson**, or his

or her designee, to act as its Representative for the performance of this Agreement (“**Consultant’s Representative**”). Consultant’s Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant’s Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

2.7 Coordination of Services. Consultant agrees to work closely with SDCP staff in the performance of Services and shall be available to SDCP’s staff, consultants and other staff at all reasonable times.

2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and sub- contractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from SDCP, any services necessary to correct errors or omissions which are caused by the Consultant’s failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subcontractors who is determined by SDCP to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to SDCP, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to SDCP, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold SDCP, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

2.10 Insurance.

2.10.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to SDCP that it has secured all insurance required under this section, in a form and with insurance companies acceptable to SDCP. In

addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to SDCP that the subcontractor has secured all insurance required under this section.

2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

2.10.3 Professional Liability. Consultant shall procure and maintain, and require its subcontractors to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by SDCP to add the following provisions to the insurance policies:

(A) General Liability.

(i) Commercial General Liability Insurance must include

coverage for (1) Bodily Injury and Property Damage; (2) Personal Injury/Advertising Injury; (3) Premises/Operations Liability; (4) Products/Completed Operations Liability; (5) Aggregate Limits that Apply per Project; (6) Explosion, Collapse and Underground (UCX) exclusion deleted; (7) Contractual Liability with respect to this Agreement; (8) Broad Form Property Damage; and (9) Independent Consultants Coverage.

(ii) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(iii) The policy shall give SDCP, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(iv) The additional insured coverage under the policy shall be “primary and non-contributory” and will not seek contribution from SDCP’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) SDCP, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects SDCP, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant’s scheduled underlying coverage. Any insurance or self-insurance maintained by SDCP, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant’s insurance and shall not be called upon to contribute with it in any way.

(C) Workers’ Compensation and Employers Liability Coverage.

(i) Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and Consultant will comply with such provisions before commencing work under this Agreement.

(ii) The insurer shall agree to waive all rights of subrogation against SDCP, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Defense costs shall be payable in addition to the limits set forth hereunder. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any

available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to SDCP, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater.

(i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of SDCP (if agreed to in a written contract or agreement) before SDCP's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(ii) Consultant shall provide SDCP at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to SDCP at least ten (10) days prior to the effective date of cancellation or expiration.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by SDCP, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(v) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, SDCP has the right but not the duty to obtain the insurance it deems necessary and any premium paid by SDCP will be promptly reimbursed by Consultant or SDCP will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, SDCP may cancel this Agreement. SDCP may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(vi) Neither SDCP nor any of its directors, officials, officers,

employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to SDCP, its directors, officials, officers, employees, agents and volunteers.

2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by SDCP. Consultant shall guarantee that, at the option of SDCP, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SDCP, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, licensed to do business in California, and satisfactory to SDCP.

2.10.8 Verification of Coverage. Consultant shall furnish SDCP with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to SDCP. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf and shall be on forms provided by SDCP if requested. All certificates and endorsements must be received and approved by SDCP before work commences. SDCP reserves the right to require complete, certified copies of all required insurance policies, at any time.

2.10.9 Subcontractor Insurance Requirements. Consultant shall not allow any subcontractors to commence work on any subcontract until they have provided evidence satisfactory to SDCP that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors shall be endorsed to name SDCP as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, SDCP may approve different scopes or minimum limits of insurance for particular subcontractors.

2.10.10 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3. Fees and Payments.

3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit B, attached hereto. The total compensation shall not exceed the following rate structure:

	Description:	Contingency Fee
Non-Residential Customers	Primary Placements	22%
	Legal Action/Forwarding on Primary Placements	28%

Residential Customers	Primary Placements	19%
	Legal Action/Forwarding on Primary Placements	22%

without written approval of SDCP's **Chief Executive Officer** or **Deputy Chief Executive Officer** and may be subject to review by both parties after the first year. Extra Work may be authorized, as described below, and, if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.2 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by SDCP.

3.3 Extra Work. At any time during the term of this Agreement, SDCP may request that Consultant perform Extra Work. As used herein, "**Extra Work**" means any work which is determined by SDCP to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from SDCP's Representative.

4. **Accounting Records.** Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of SDCP during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

5. General Provisions.

5.1 Termination of Agreement.

5.1.1 Grounds for Termination. SDCP may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to SDCP, and

Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, SDCP may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, SDCP may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: Financial Credit Network, Inc. (FCN)
Attn: Kris Davisson
Vice President
1300 West Main Street
Visalia, CA 93281

SDCP: San Diego Community Power
Attn: Chief Executive Officer
PO BOX 12716
San Diego, CA 92112

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

5.3 Ownership of Materials and Confidentiality.

5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for SDCP to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“**Documents & Data**”). Consultant shall require all subcontractors to agree in writing that SDCP is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were

prepared by design professionals other than Consultant or provided to Consultant by SDCP. SDCP shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at SDCP's sole risk.

5.3.2 Intellectual Property. In addition, SDCP shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media ("**Intellectual Property**") prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

SDCP shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part by SDCP, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of SDCP.

Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of the SDCP.

All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

SDCP further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

5.3.3 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of SDCP, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use SDCP's name or insignia,

photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of SDCP.

5.3.4 Infringement Indemnification. Consultant shall defend, indemnify and hold SDCP, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by SDCP of the Documents & Data, including any method, process, product, or concept specified or depicted.

5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

5.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

5.6 Indemnification.

5.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of SDCP's choosing), indemnify and hold the SDCP, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against SDCP, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against SDCP or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse SDCP and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the SDCP, its officials, officers, employees, agents, or volunteers. This section shall survive any expiration or termination of this Agreement.

5.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code § 2782.8), then, and only to the extent required by Civil Code § 2782.8, which is fully

incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Diego County.

5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

5.10 SDCP's Right to Employ Other Consultants. SDCP reserves right to employ other consultants in connection with this Project.

5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of SDCP. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to SDCP include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, SDCP shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of SDCP, during the term of his or her service with SDCP, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

5.19 Equal Opportunity Employment and Subcontracting. Consultant represents that it is an equal opportunity employer and it shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of applicants, employees, subcontractors, vendors, or suppliers. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Further, Consultant shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.

5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

5.23 Subcontracting. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of SDCP. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE TO
SAN DIEGO COMMUNITY POWER
PROFESSIONAL SERVICES AGREEMENT**

IN WITNESS WHEREOF, the Parties have made and executed this Agreement as of the date first written above.

SAN DIEGO COMMUNITY POWER

[INSERT NAME OF CONSULTANT]*

By : _____
Name: _____
Title: _____

By : _____
Name: _____
Title: _____

ATTEST:

[INSERT NAME OF CONSULTANT]*

Secretary, SDCP Board of Directors

By : _____
Name: _____
Title: _____

APPROVED AS TO FORM:

SDCP General Counsel

**A corporation requires the signatures of two corporate officers.*

One signature shall be that of the Chairman of Board, the President or any Vice President, and the second signature (on the attest line) shall be that of the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of such corporation.

If the above persons are not the intended signators, evidence of signature authority shall be provided to SDCP.

EXHIBIT A

SCOPE AND SCHEDULE OF SERVICES

The primary scope of service is to achieve maximum recovery of debts owed to SDCP for electric generation services rendered to customers. SDCP values professionalism, a sense of community, and quality public services. As a result, the Consultant needs to provide debt collection services effectively and empathetically, with care and respect to SDCP's diverse customer base.

The Consultant will perform the debt collection services for non-residential and residential customers for SDCP as follows:

- Consultant shall familiarize itself with [SDCP's Board Approved Collection & Delinquency Accounts Handling Policy](#) and the bad debt minimums listed within the policy.
- Consultant shall accept referrals for non-residential and residential customers from SDCP and/or SDCP's back-office service provider for collection and settlement.
- When directed by SDCP, Consultant may file credit reporting information on the pertinent customers with all applicable agencies.
- Consultant shall demonstrate expertise and experience with debt collection and must be a member of the ACA International (formerly known as American Collectors Association) and/or the Associated Credit Bureaus.
- Consultant shall make contact with all delinquent accounts referred by SDCP under the name of its debt collection agency, not in the name of SDCP.
- Consultant shall submit status reports on a monthly basis and an annual report on a fiscal year based on July 1st through June 30th fiscal year schedule, reflecting the activity for the previous fiscal year. These reports shall include data for each of account detailing the value of the current debt, money received, charges waived, balance due and date of last payment. A financial summary will also be required showing "period to date" and "year to date" totals for pertinent information such as receipts, net accounts receivable, total accounts receivable, and collection percentage. In addition, an aging report should be available in summary and in detail. Consultant shall provide copies of all available reports.
- In accordance with SDCP's Board approved Collections and Delinquent Accounts Handling policy, no accrued interest will be charged on any customer account by the Consultant while collecting on customers' delinquent balances.

- Consultant shall accept automated (digital) or manual (hard copy) transfer of delinquent payment information from SDCP and/or SDCP's designated back-office service provider. It is expected that the Consultant will work, at no additional cost, with SDCP and/or SDCP's designated back-office service provider to ensure accurate, timely and secured transmission of data.
- In accordance with SDCP's [Customer Data Confidentiality Policy](#), Consultant shall ensure that data flow between SDCP and/or SDCP's designated back-office service provider will be via secured channels such as SFTP, SharePoint etc. and guarantee the confidentiality, security, and safety of all files, documents, computer files, and shall agree to enter into a confidentiality agreement with SDCP.
- Consultant shall perform all work in accordance with the applicable provisions of the Federal Fair Debt Collection Practices Act, as well as all state and local laws and SDCP staff direction.
- The Consultant shall meet periodically with the SDCP staff to discuss all services. The Consultant will also provide recommendations on how SDCP can reduce future bad debt. SDCP will provide overall feedback on the conduct of the collection service, as it will reflect on SDCP's policies and reputation. The Consultant will agree to employ courteous business procedures to the end of maintaining SDCP's goodwill in the community. The Consultant shall also provide updates to SDCP on changes in state and federal laws related to credit and collections.
- The Consultant will be fully responsible for maintaining accurate records of all correspondence, documents, accounting records, transactions and other relative evidence for at least four (4) years in accordance with California's statute of limitations for debt collection. All records and books shall be made available to SDCP for review upon request.
- Any settlement of principal or charges shall be agreed upon between the Consultant and SDCP, prior to acceptance. No legal actions shall be taken against a customer without the express written consent of SDCP.
- The attorney of record on the collections referred that do require litigation, must be a member in active and good standing with the State Bar of California. The Consultant must agree that any litigation commenced for collection of a premium debt be filed in the applicable state or federal courts located in the County of San Diego, California.
- Consultant must adhere to ethical vendor standards including good business practices, environmental track record, and commitment to fair employment practices and compensation.

- Consultant must have the staff capable of meeting the requirements of this agreement. To the extent that Consultant lacks specific expertise in any of the disciplines needed by SDCP, a professional team of subcontractors or associate firms should be assembled by the Consultant to complement their technical expertise, which shall be subject to approval by SDCP pursuant to Section 5.23 of the Agreement.

EXHIBIT B

COMPENSATION BILLING RATES

	Description:	Contingency Fee
Non-Residential Customers	Primary Placements	22%
	Legal Action/Forwarding on Primary Placements	28%
Residential Customers	Primary Placements	19%
	Legal Action/Forwarding on Primary Placements	22%



San Diego Community Power

Collections and Delinquent Accounts Handling Policy

Effective Date: June 22, 2023

PURPOSE

This policy establishes a delinquent accounts, late payment notification, collections and write off policy that provides the framework for San Diego Community Power (SDCP) Staff and Back Office Service provider to better serve our customers and set clear expectations on the handling of past due customer charges for both Residential and Non-Residential customers

GENERAL CRITERIA

1. All customers have an obligation to pay for outstanding SDCP charges for the period in which they received service from SDCP.

DELINQUENCY HANDLING: LATE PAYMENT NOTIFICATION

2. Any active SDCP customer who has overdue SDCP charges that exceed \$250 for residential and \$500 for non-residential class shown on their SDG&E bill will receive a late payment notification letter from SDCP at the customer's last known mailing address on file or, if customer consented to receive electronic notices or electronic bills, at customer's last known email address on file. The first letter and/or email will be sent after the account balance is 60 days past due, with a second letter and/or email sent after being 90 days past due, informing the customer of their overdue status, the avenues available to pay the overdue SDCP charges, and means to apply for a payment plan arrangement with SDG&E. The customer will be provided 30 days after the second and final late payment notification is sent to either pay in full or make arrangements to cure the past due balance through payment plans offered by SDG&E on behalf of SDCP. If payment in full is not received within the prescribed 30 days, or the terms of an activated payment arrangement are not fulfilled, the delinquent SDCP customer account will be dropped from SDCP generation service and returned to SDG&E bundled generation service on the next account meter read date. SDG&E has discretion to assess the customer an opt out fee in accordance with SDG&E's Schedule CCA ("Transportation of Electric Power for Community Choice Aggregation Customers") and to also enforce their other terms and conditions, including the return to full-bundled SDG&E service on SDG&E's Transitional Bundled Service (TBS) rate. Transfer back to SDG&E service does not relieve the customer of paying SDCP charges and/or other charges due and owing including SDG&E charges, nor does it halt any SDG&E shut-off procedures.

[Please see the following exceptions:](#)

- Customers already on any SDG&E payment arrangement plans who are meeting the payment plan requirements will be excluded from receiving late payment notifications and/or being subjected to SDCP's delinquent accounts handling protocols.
- SDCP customers enrolled in the California Alternate Rates for Energy (CARE) and Family Electric Rate Assistance (FERA) shall receive an additional 2 late payment letters after being 120 days past due and 150 days past due respectively after the initial 2 letters referenced in #2 above and will be provided 30 days, after the 4th and final late payment notification letter is sent, to either pay in full or make arrangements to cure the past due balance in installments through payment plans offered through SDG&E on behalf of SDCP. If payment in full is not received within the prescribed 30 days, or the terms of an activated payment arrangement are not fulfilled, the delinquent SDCP customer account will be closed and returned to SDG&E bundled generation service on the next account meter read date. SDG&E has discretion to assess the customer an opt out fee in accordance with SDG&E's Schedule CCA ("Transportation of Electric Power for Community Choice

Aggregation Customers”) and to also enforce their other terms and conditions, including the return to full-bundled SDG&E service on SDG&E’s Transitional Bundled Service (TBS) rate.

- SDCP customers enrolled in the California Alternate Rates for Energy (CARE) and Family Electric Rate Assistance (FERA) at the time SDG&E returns the uncollectable receivable to SDCP are not subject to the collections protocols articulated in this policy if the balance is \$500 or less.

COLLECTIONS:

3. SDCP has selected a proven collections agency through a formal solicitation process to enforce this policy for Non-Residential customers in 2022 in accordance with the 2021 Board approved Collections and Delinquent Accounts Handling policy and will look to expand the scope of service to cover residential customers once the Board approves the policy updates herein.
4. Any overdue SDCP charges (120 days or more past due) totaling \$50.00 or more which have not been paid by a customer who is no longer active and being collected by SDG&E may be referred to a collections agency for settlement.
5. Any overdue SDCP charges (120 days or more past due) totaling \$49.99 or less which have not been paid by a customer who is no longer active and being collected by SDG&E may be considered bad debt and written off.
6. No accrued interest will be charged on any customer account.
7. If a customer has not paid within 180 days following the initiation of the collections process, the collection agency may file credit reporting information on the customer with all applicable agencies.
8. Under review and the guidance of SDCP Staff, the collections agency may be authorized to pursue legal action on any customer with an outstanding balance of \$750 or more.
9. The collection agency is prohibited from selling information provided by SDCP for the purposes of collection of the past due balance.
10. The collection agency retained by SDCP shall comply with all laws or regulations relating to consumer protection, credit reporting or monitoring, debt collections, customer confidentiality, or other similar laws and regulations.
11. After a customer has paid all overdue amounts, all collections activity will terminate for that customer.

MISCELLANEOUS:

12. On no less than an annual basis, SDCP Staff shall review the delinquency handling protocols, late payment notification, collections and write off practices articulated in this policy and propose adjustments to the Board as needed.
13. The Chief Executive Officer (CEO) of SDCP or their designee may, in their discretion, cancel, recall an account from the collection agency or otherwise deviate from the process specified in this policy for reasons including but not limited to cases of unforeseeable events, inconsistent receivable data from SDG&E, exigent circumstances, SDG&E bill presentment limitations or customer hardship.
14. Notwithstanding any other provision of this policy, SDCP may pursue any remedy available under applicable law to collect delinquent amounts due to SDCP.



SAN DIEGO COMMUNITY POWER Staff Report – Item 4

To: San Diego Community Power Board of Directors

From: Andrea Torres, Sr. Portfolio Manager, Power Services

Via: Karin Burns, Chief Executive Officer

Subject: Approval of First Amendment to the Professional Services Agreement Between San Diego Community Power and Tenaska Power Services Co for Scheduling Coordinator Services

Date: August 25, 2022

RECOMMENDATION

Approve the First Amendment to the Agreement Between San Diego Community Power and Tenaska Power Services Co (Tenaska) for Scheduling Coordinator Services (First Amendment) to expand services on a limited basis for generating assets as well as optimization of battery energy storage.

BACKGROUND

At the May 28, 2020 meeting of the Board of Directors, the Board approved the Agreement between San Diego Community Power and Tenaska Power Services Co for Scheduling Coordinator Services (Scheduling Coordinator Agreement). These services were sourced via SDCP's 2019 Request for Proposal (RFP) for several services in support of Power Services. The current scope of services in the Scheduling Coordinator Agreement includes scheduling coordinator and forecasting services for SDCP's load, CAISO settlement activities, market monitoring and congestion revenue rights services. This First Amendment allows for scheduling coordinator services of generation assets as well as revenue optimization of battery energy storage assets under contract with SDCP.

ANALYSIS AND DISCUSSION

Staff recommends executing this First Amendment to the Scheduling Coordinator Agreement to expand the current scope provided by Tenaska. As SDCP adds generation and storage assets to its portfolio, SDCP will be required to schedule and bid such resources into the CAISO market and respond to CAISO and transmission provider dispatches and curtailments. This First Amendment will enable SDCP to add certain resources for inclusion in Tenaska's scheduling coordinator and battery energy storage optimization services. This scope of work is expected to maximize revenues from SDCP's growing portfolio of renewable and storage assets to the benefit SDCP customers and support the delivery of safe and reliable power to the grid.

FISCAL IMPACT

The cost of the First Amendment scope of work is estimated to be approximately \$120,000 per year.

ATTACHMENTS

- A. First Amendment to the Agreement Between San Diego Community Power and Tenaska Power Services Co for Scheduling Coordinator Services



**FIRST AMENDMENT TO THE AGREEMENT BETWEEN SAN DIEGO
COMMUNITY POWER AND TENASKA POWER SERVICES CO FOR
SCHEDULING COORDINATOR SERVICES**

This First Amendment to the Scheduling Coordinator Agreement (“**Amendment**”) is entered into as of August 24, 2023 (the “**First Amendment Effective Date**”) by and between SAN DIEGO COMMUNITY POWER, a California joint powers authority (“**SDCP**”) and TENASKA POWERS SERVICES CO., a Nebraska corporation (“**TPS**”). Each of SDCP and TPS may be referred to herein as a “**Party**” and collectively as the “**Parties**” to this Amendment.

RECITALS

WHEREAS, SDCP and TPS are Parties to that certain *Scheduling Coordinator Agreement*, dated June 16, 2020 (“**Agreement**”);

WHEREAS, TPS acts as an agent in managing SDCP’s schedule coordinator services for non-SDCP owned generation resources;

WHEREAS, pursuant to Section 1.4 of the Agreement, the Parties are required to amend the Agreement to add incremental responsibilities and compensation if SDCP adds generation resources where SDCP has ownership or a PPA requiring a scheduling coordinator; and

WHEREAS, SDCP desires TPS to act as agent in managing SDCP’s SCID for a certain generation resource, and the Parties desire to amend the Agreement to address TPS’s incremental responsibilities and compensation.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both Parties, SDCP and TPS hereby agree as follows:

1. Amendment of Section 1.4. Section 1.4 is hereby replaced in its entirety with the following:

“If SDCP adds generation resources where SDCP has ownership or a PPA requiring a Scheduling Coordinator, and elects to use TPS, SDCP and TPS will negotiate in good faith and amend this Agreement to reflect incremental responsibilities and compensation. The Parties will add the additional services and compensation for each such resource as an update to Exhibit C.”

2. Amendments to Exhibit A:

a. The following sentence is hereby deleted from the end of Section 1.b:

“(Some of these functions are for generation and will apply once SDCP acquires generation assets/PPAs)”

b. The following new subsection is hereby added at the end of Section 1:

“f. Pursuant to TPS’s role as agent for SDCP’s SCID and for generation resources and load that reside in the SDCP SCID, as and when SDCP directly enters into supply agreements with power suppliers, generators,

storage facilities, and/or demand response or other aggregated or virtual resources, TPS will perform the scheduling and settlement activities required to schedule SDCP's resource performance metrics, including volumes and pricing for load, contracted generation and IST hedges. SDCP must provide TPS with all schedules, offers, bids, instructions, and other information it desires TPS to submit to CAISO or WECC at least one (1) hour prior to the applicable submission deadlines."

3. Amendment of Exhibit B. Exhibit B is hereby replaced in its entirety with a new Exhibit B, attached hereto.

4. Addition of Exhibits C and D. Exhibit C and Exhibit D are hereby added, and are attached hereto.

5. Capitalized Terms. Any capitalized terms not defined herein shall have the meanings set forth in the Agreement.

6. Full Force. Except as expressly set forth herein, the Agreement shall remain unmodified and in full force and effect.

7. Counterparts. This Amendment may be executed in multiple counterparts, including facsimile(s) or emails, each one of which will be considered an original agreement, but all of which together will constitute one and the same instrument.

8. Entire Amendment. This Amendment contains the entire agreement between the Parties with respect to the subject matter of this Amendment and supersedes any previous understandings, commitments, or agreements, oral or written, with respect to such subject matter of this Amendment.

WHEREFORE, the Parties acknowledge and agree to this Amendment effective as of the First Amendment Effective Date.

SAN DIEGO COMMUNITY POWER

By: _____

Name: _____

Title: _____

TENASKA POWER SERVICES CO.

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

SDCP General Counsel

EXHIBIT B

SCHEDULE COORDINATOR FEE SCHEDULE AND PAYMENTS

This Exhibit B describes the Services Fees (“**Service Fees**”) to be remitted to TPS from SDCP for all Services performed pursuant to this Agreement.

Service Fees for Load

Volumetric fee: \$0.03/MWh of SDCP metered load (billed monthly)

Setup fee: waived

Service Fees for Resources

Fixed Monthly Fee. For performance of the Services described herein, SDCP shall pay TPS a fee equal to the amount listed for the corresponding Resource in Exhibit C each Month (“**Fixed Monthly Fee**”) in arrears and prorated for any partial Month of Service, beginning on the Resource Commencement Date for that Resource and continuing throughout the Term; *provided* that the Fixed Monthly Fee shall increase by the Escalator on the first Day of the Month of each anniversary of the corresponding Resource Commencement Date for that Resource.

BESS Optimization. For each Month during the Term, SDCP will pay TPS an amount equal to the percentage listed for the corresponding Resource in Exhibit C of the positive Net Optimization Benefit with respect to such Month (“**Battery Optimization Fee**”). The “**Net Optimization Benefit**” or “**NOB**” for a given Month shall equal (i) the total net revenues received by TPS in such Month from sales of Product pertaining to the applicable Resource, *minus* (ii) the applicable Resource charging costs in such Month. For the avoidance of doubt, revenues associated with Exceptional Dispatch shall be included in the NOB calculation.

- (i) Exclusions From NOB Calculations. SDCP may charge or discharge Energy from a Resource identified in Exhibit C over a time period during which TPS has advised it would not be economical to charge or discharge such Resource (e.g., when SDCP is testing the Resource or dealing with operational or safety issues at the Resource). If SDCP charges or discharges Energy from such Resource during periods in which TPS has advised such charge or discharge would be uneconomic, then the economic results of such action shall be borne solely by SDCP and excluded from the NOB calculation. Additionally, with regard to a Resource identified in Exhibit C, for operational reasons or otherwise, SDCP may request TPS to intentionally consummate a purchase or sale of a Product for a price that is less than the Resource’s Power Costs, or to purchase a Product, at a price in excess of the Resource’s Power Costs. If these or similar intentional cases should arise, SDCP will bear all costs and losses resulting from such transaction, and such transactions will be excluded from the calculation of NOB.
- (ii) Unintentional Losses. If in any Month a transaction unintentionally results in a NOB that is negative, such negative amounts shall be netted against the positive NOB amounts in such Month; provided, however, the Battery Optimization Fee in such Month shall never be negative.

EXHIBIT C RESOURCES

Resource 1:

Resource Name:	
Location:	
CAISO Resource ID:	
Unit SCID:	SDCP
Portion of total CAISO Net Qualifying Capacity of Resource:	
Resource Type:	Standalone Battery Storage
Capacity:	
Delivery Point:	
Facility PNode:	
Transmission Owner:	
Fixed Monthly Fee:	\$6,850.00
Battery Optimization Fee	3.5%

EXHIBIT D DEFINITIONS

For purposes of this Agreement, the following capitalized terms shall have the meanings set forth below. All other capitalized terms used in this Agreement, but not otherwise defined in this Agreement, shall have the same meaning as defined in the CAISO Protocols.

“Affected Party” shall have the meaning set forth in Section 14.3 of this Agreement.

“Agreement” shall have the meaning set forth in the preamble of this Agreement.

“Ancillary Services” shall mean all current and future products and services defined by CAISO in CAISO Protocols that are necessary to support the transmission and distribution of Energy from point of generation to point of delivery while maintaining reliable operation of the transmission system or which are commonly sold or traded in the market served by CAISO, which may include Spinning Reserves, Non-Spinning Reserves, Regulation Up, Regulation Down, and any other ancillary services, but specifically excluding Resource Adequacy Capacity (all as defined in the CAISO Protocols).

“Assessments” shall have the meaning set forth in Section 14.3 of this Agreement.

“Battery Operation Fee” shall have the meaning set forth in Exhibit C of this Agreement.

“BESS” shall mean a battery energy storage system.

“Business Day” shall mean any Day other than a Saturday, Sunday, or Day on which Federal Reserve member banks in Texas are closed for business.

“CAISO” shall mean the California Independent System Operator Corporation or any successor thereto.

“CAISO Protocols” shall mean the tariff, business practice manuals, and the governing rules of the CAISO’s operations.

“Commencement Date” shall have the meaning set forth in Section 1.2 of this Agreement.

“Confidential Information” shall have the meaning set forth in Section 10(A) of this Agreement.

“Covered Claim” shall have the meaning set forth in Section 4.8 of this Agreement.

“Data Manager” shall have the meaning set forth in Section 3.3 of this Agreement.

“Day” shall mean a calendar day.

“Dispute” shall have the meaning set forth in Section 7.5 of this Agreement.

“Documentation” shall have the meaning set forth in Section 1.2 of this Agreement.

“Energy” means electric energy.

“Escalator” shall equal the greater of (i) the percentage change in the Consumer Price Index for All Urban Areas or “CPI-U” published by the U.S. Department of Labor and applicable for the twelve consecutive Months ending prior to the first Day of the Month in which the Commencement Date occurs each year during the Term, from the annual average CPI-U prevailing for the prior twelve consecutive Month period or (ii) two percent (2.0%).

“Event of Default” shall have the meaning set forth in Section 7.2 of this Agreement.

“Exceptional Dispatch” shall have the meaning as defined in the CAISO Protocols.

“Extra Work” shall have the meaning set forth in Section 5.4 of this Agreement.

“First Amendment Effective Date” shall have the meaning set forth in the preamble of the First Amendment to this Agreement.

“Force Majeure” shall have the meaning set forth in Section 15.1 of this Agreement.

“GO” shall mean a **“Generator Owner”** as described in the CAISO Protocols.

“GOP” shall mean a **“Generator Operator”** as described in the CAISO Protocols.

“Indemnified Party” shall have the meaning set forth in Section 13.1 of this Agreement.

“Initial Term” shall have the meaning set forth in Section 1.3 of this Agreement.

“IST” or Inter-SC Trade has the meaning given that term in the CAISO Protocols.

“LSE” shall mean a Load Serving Entity as described in the CAISO Protocols.

“Month” means a calendar month.

“NERC” shall mean the North American Electric Reliability Corporation or any successor thereto.

“Net Optimization Benefit” or “NOB” shall have the meaning set forth in Exhibit C of this Agreement.

“Party” or “Parties” shall have the meaning set forth in the preamble of this Agreement.

“Power Costs” means all actual costs incurred by or on behalf of SDCP associated with the sale, purchase or transmission of power generated or consumed by a Resource identified on Exhibit C, including without duplication all (i) transmission costs, (ii) any CAISO or control area costs, penalties and charges arising under the PPA(s) or other agreements with third parties, including

imbalance penalties and costs, (iii) costs related to Ancillary Services, and (iv) costs related to the start-up and shut-down of the Resource.

“Power Purchase Agreement” or **“PPA”** shall mean the power transaction dated on or about _____, 20__ entered by _____ and SDCP and effective from _____, 20__ to _____, 20__ pursuant to which _____ sells as-generated Energy to SDCP.

“Product” shall mean Energy, Ancillary Services, and capacity and any other power product allowed for sale or purchase in the CAISO market that the Parties may mutually agree to transact or schedule under this Agreement.

“Project” shall have the meaning set forth in the recitals of this Agreement.

“PTP®” shall have the meaning set forth in Section 6.2 of this Agreement.

“Renewal Term” shall have the meaning set forth in Section 1.3 of this Agreement.

“Representatives” shall mean each Party’s respective directors, officers, and employees, including, without limitation, attorneys, accountants, partners, and/or consultants.

“Resource” or **“Resources”** means each generating facility located within the CAISO market, owned by Customer or by any affiliate of Customer, or with regard to which Customer has entered into a PPA with a third party.

“Resource Commencement Date” means, for each Resource identified in Exhibit C, the later of (i) the First Amendment Effective Date, (ii) the date upon which TPS receives notice that CAISO authorizes TPS to commence representing the Resource within CAISO’s system, or (iii) the date upon which the Resource first produces Energy, including test Energy.

“Responsible Party” shall have the meaning set forth in Section 14.3 of this Agreement.

“Scheduling Coordinator” shall have the meaning as defined in the CAISO Protocols.

“Scheduling Services” shall mean collectively, those services to be performed by TPS to SDCP as further described in Exhibit A.

“SCID” shall mean the Scheduling Coordinator ID assigned to SDCP by CAISO in which SDCP’s Resource resides and TPS is the registered Scheduling Coordinator agent.

“Services” shall have the meaning set forth in Section 1.1 of the Agreement.

“SDCP” shall mean San Diego Community Power.

“SDCP Materials” shall have the meaning set forth in Section 9 of this Agreement.

“SDCP’s Representative” shall have the meaning set forth in Section 3.4 of this Agreement.

“Term” shall mean the period commencing on the Effective Date through and including the expiration of the Initial Term and any Renewal Term, as applicable, subject in all cases to any early termination of this Agreement as permitted herein.

“Termination Invoice” shall have the meaning set forth in Section 7.3 of this Agreement.

“Termination Payment” shall have the meaning set forth in Section 7.3 of this Agreement.

“TPS” means Tenaska Power Services Co.

“TPS’s Representative” shall have the meaning set forth in Section 3.5 of this Agreement.

“Transition Period” shall have the meaning set forth in Section 1.2 of this Agreement.

“Transition Services” shall have the meaning set forth in Section 1.2 of this Agreement.

“UDC” means the Utility Distribution Company, which is currently San Diego Gas & Electric.

“WECC” means the Western Electricity Coordinating Council or successor agency.

The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined. “Include,” “includes” and “including” shall be deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of like import. Any agreement, instrument, document, rule or law defined or referred to herein means such agreement, instrument, document, rule or law as from time to time amended, modified or supplemented. References to a Person include its successors and permitted assigns. “Hereof,” “herein,” “hereunder” and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular Article, Section or other subdivision thereof or attachment thereto. References in an instrument to “Article,” “Section” or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section or subdivision of or an attachment to such agreement or instrument. All references to exhibits or appendices in any agreement or instrument that is governed by this Agreement are to exhibits or appendices attached to such instrument or agreement. References to any gender include, unless the context otherwise requires, references to all genders. References to “\$” or to “Dollars” or “Cents” shall mean the lawful currency of the United States of America.



SAN DIEGO COMMUNITY POWER Staff Report – Item 5

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director Power Services

Via: Karin Burns, Chief Executive Officer

Subject: 2022 Power Source Disclosure Program Annual Reports and Power Content Label

Date: August 24, 2023

RECOMMENDATION

Adopt Resolution 2023-XX approving the submission and attesting to the accuracy of SDCP's 2022 Power Source Disclosure annual reports for PowerOn and Power100 and the 2022 Power Content Label.

ANALYSIS AND DISCUSSION

The California Public Utilities Code requires all retail sellers of electric energy, including SDCP, to disclose "accurate, reliable, and simple-to-understand information on the sources of energy, and the associated emissions of greenhouse gasses, that are used to provide electric services."¹ Applicable regulations direct retail sellers to provide such communications to customers following each year of operation. The format for this communication, named the Power Content Label (PCL) by the California Energy Commission (CEC), is highly prescriptive, offering little flexibility to retail sellers when presenting such information to customers. Similar to the presentation of information on a nutritional label, the PCL informs retail electricity customers of the power sources that were procured to serve their electric energy needs. Prior to distributing the PCL to its customers, SDCP must annually submit reports to the CEC detailing specified-source power purchases for each retail service offering that was made available during the previous year. These annual reports and the PCL are required elements of California's Power Source Disclosure Program (PSD Program); information reflected in each annual report is contributory to the PCL (with the power supply breakout reflected in each annual report inserted in SDCP's PCL template).

Information presented in the PCL includes the proportionate share of total energy supply attributable to various resource types, including both renewable and conventional fuel sources. In the event that a retail seller meets a certain percentage of its resource needs

¹ California Public Utilities Code Section 398.1(b).

from unspecified resources/purchases, the report must identify such purchases as “unspecified sources of power.” As your Board may be aware, certain of SDCP’s power supply agreements reflect the delivery of unspecified/market power to satisfy a portion of SDCP’s energy requirements. These purchases serve to promote budgetary certainty and rate stability – such purchases, as well as electric energy provided by the California Independent System Operation for purposes of grid balancing, have been appropriately identified as “unspecified sources of power” in SDCP’s PCL.

During the 2022 calendar year, SDCP’s second year of service, SDCP successfully delivered a substantial portion of its electric energy supply from various renewable energy sources, including wind, solar, geothermal, hydroelectricity and biofuel energy sources – for SDCP customers participating in the PowerOn service option, the percentage of supply attributable to renewable energy sources was 54.2 percent of the total (with 67 percent of total PowerOn energy purchases sourced from zero- or low-carbon sources). For the Power100 retail service offering, CEC-certified wind and solar resources were the exclusive sources of supply, which contributed to zero emissions for the Power100 portfolio. The following table reflects SDCP’s 2022 PCL, presented in the CEC’s required format.



2022 POWER CONTENT LABEL						
San Diego Community Power						
https://sdcommunitypower.org/resources/key-documents/						
Greenhouse Gas Emissions Intensity (lbs CO ₂ e/MWh)			Energy Resources	2022 SDCP PowerOn Power Mix	2022 SDCP Power100 Power Mix	2022 CA Power Mix
2022 SDCP PowerOn Power Mix	2022 SDCP Power100 Power Mix	2022 CA Utility Average	Eligible Renewable ¹ Biomass & Biowaste Geothermal Eligible Hydroelectric Solar Wind Coal Large Hydroelectric Natural Gas Nuclear Other Unspecified Power ² TOTAL	54.2%	100.0%	35.8%
375	0	422		1.2%	0.0%	2.1%
<p>1000 800 600 400 200 0</p> <p>■ 2022 SDCP PowerOn Power Mix ■ 2022 SDCP Power100 Power Mix ■ 2022 CA Utility Average</p>				2.6%	0.0%	4.7%
				1.3%	0.0%	1.1%
				25.5%	50.0%	17.0%
				23.6%	50.0%	10.8%
				0.0%	0.0%	2.1%
				12.8%	0.0%	9.2%
				0.0%	0.0%	36.4%
				0.0%	0.0%	9.2%
				0.0%	0.0%	0.1%
				33.1%	0.0%	7.1%
100.0%	100.0%	100.0%				
Percentage of Retail Sales Covered by Retired Unbundled RECs ³ :				0%	0%	
¹ The eligible renewable percentage above does not reflect RPS compliance, which is determined using a different methodology.						
² Unspecified power is electricity that has been purchased through open market transactions and is not traceable to a specific generation source.						
³ Renewable energy credits (RECs) are tracking instruments issued for renewable generation. Unbundled renewable energy credits (RECs) represent renewable generation that was not delivered to serve retail sales. Unbundled RECs are not reflected in the power mix or GHG emissions intensities above.						
For specific information about this electricity portfolio, contact:			San Diego Community Power 1 (888) 382-0169			
For general information about the Power Content Label, visit:			https://www.energy.ca.gov/programs-and-topics/programs/power-source-disclosure-program			

Consistent with applicable regulations, SDCP will complete requisite customer communications following your Board's approval of pertinent information to be included in the 2022 PCL. Customers receiving 2022 PCL communications will include all those served by SDCP during the 2022 calendar year. This communication will be sent to customers no later than October 1, 2023.

While preparing SDCP's 2022 annual PSD reports and PCL, staff performed a detailed review of all power purchases completed for the 2022 calendar year. This review included an inventory of all renewable energy credit transfers within SDCP's Western Renewable Energy Generation Information System (WREGIS) account, related contract documents and pertinent transaction records associated with other specified energy purchases. Based on staff's review of available data, the information presented in the annual reports and PCL was determined to be accurate.

To fulfill its obligations under the PSD Program, SDCP must also provide the CEC with an attestation of its Governing Board regarding the accuracy of information included in its

PSD reports and PCL for the 2022 operating year. With regard to this internally administered attestation process, applicable regulations state²:

A retail supplier that is a public agency providing electric services is not required to comply with the provisions of subdivision (a)(1) if the board of directors of the public agency submits to the Energy Commission an attestation of the veracity of each annual report and power content label for the previous year.

Evidence of SDCP's attestation must be provided to the CEC no later than October 2, 2023.

In consideration of SDCP's internal review and applicable regulations, staff requests that the Board accept this determination of informational accuracy and, based on this staff-level determination and related recommendation, attest to the accuracy of information included in SDCP's 2022 Power Source Disclosure reports and PCL. Should your Board endorse staff's recommendation, a copy of: 1) this staff report; 2) Resolution 2023-XX; and 3) a copy of SDCP's completed 2022 PCL template (in both Excel and PDF formats) will be forwarded to the CEC, thereby completing SDCP's obligations under the PSD Program for the 2022 calendar year.

Fiscal Impacts: Other than the typical cost of producing and distributing Power Content Labels to SDCP customers, there are no expected fiscal impacts.

Recommendation: Endorse the accuracy of information presented in SDCP's 2022 Power Source Disclosure reports for PowerOn and Power100 as well as SDCP's 2022 Power Content Label.

FISCAL IMPACT
N/A

ATTACHMENTS

- A. Resolution 2023-XX approving and attesting to the veracity of the 2022 Power Source Disclosure annual reports for PowerOn and Power100 and the 2022 power content label

² Note that Section 1393.2.(a)(1), as referenced in the excerpt from applicable PSD regulations, refers to the completion of annual independent audits.

RESOLUTION NUMBER 2023-XX

A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER APPROVING AND ATTESTING TO THE VERACITY OF THE 2022 POWER SOURCE DISCLOSURE ANNUAL REPORTS FOR POWERON AND POWER100 AND THE 2022 POWER CONTENT LABEL

A. San Diego Community Power (“SDCP”) is a joint powers authority formed pursuant to the Joint Exercise of Powers Act, Cal. Gov. Code § 6500 *et seq.*, California Public Utilities Code § 366.2, and a Joint Powers Agreement effective on October 1, 2019 (“JPA Agreement”).

B. Senate Bill 1305 was adopted in 1997 establishing an Electricity Generation Source Disclosure Program (“Power Source Disclosure Program”), which requires retail sellers of electricity to disclose to their customers each year the sources of electricity delivered to customers in the previous year and to annually submit a Power Source Disclosure Program report to the California Energy Commission (“CEC”).

C. SDCP is a retail supplier of electricity as defined by the Power Source Disclosure Program (20 C.C.R. § 1391(r)).

D. The Power Source Disclosure Program regulations were updated effective May 4, 2020 allowing the board of directors of a public agency providing retail electric service to approve at a public meeting the submission to the CEC of an attestation of the veracity of an annual report of each product’s Power Source Disclosure Program annual report and Power Content Label.

E. SDCP staff and consultants performed a detailed review of all power purchases completed for the 2022 calendar year, including an inventory of all renewable energy transfers within SDCP’s Western Renewable Energy Generation Information System account and transaction records.

F. Pursuant to California Code of Regulations section 1394.2, the SDCP Board of Directors is required to attest to the veracity of the 2022 annual report.

G. The SDCP Board of Directors held a public meeting on August 24, 2023 to consider approval and attestation of the veracity of the 2022 Power Source Disclosure Annual Report for the PowerOn and Power100 products and the 2022 Power Content Label.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of San Diego Community Power as follows:

Section 1. Recitals. The above recitals are true and correct.

Section 2. Approval and Attestation. The SDCP Board of Directors hereby approves the submission and attests to the veracity of the 2022 Power Source Disclosure annual report for SDCP’s PowerOn and Power100 products and the 2022 Power Content Label.

Section 3. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power held on August 24, 2023.

ATTEST:

Chair, Board of Directors
San Diego Community Power

Secretary, Board of Directors
San Diego Community Power



SAN DIEGO COMMUNITY POWER Staff Report – Item 6

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director and Kenny Key, Sr. Contracts Manager

Subject: Long-Term Resource Adequacy Agreement with EnerSmart Chula Vista BESS, LLC

Date: August 24, 2023

RECOMMENDATION

Adopt the proposed Long-Term Resource Adequacy Agreement with EnerSmart Chula Vista BESS, LLC and authorize the CEO to execute the agreement.

BACKGROUND

As San Diego Community Power (SDCP) strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power agreements of at least 10 years in duration are integral components of its portfolio. Long-term resource adequacy agreements provide facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term agreement that SDGP signs with a developing facility will underpin a new, incremental project.

In D.21-06-025, the California Public Utilities Commission (CPUC) required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, incremental generation facilities that will achieve commercial operation during 2023 through 2026. Additionally, SDGP has set internal targets to procure 600MW of capacity from local wholesale projects by 2035.

The proposed agreement is for resource adequacy benefits from a 6 MW, 2-hour battery energy storage facility (currently referred to as “EnerSmart Chula Vista BESS”) with EnerSmart Chula Vista BESS, LLC (“EnerSmart” or “ESS”). The agreement originated from an offer SDGP received in 2022 via its Local RFI Solicitation. SDGP engaged with EnerSmart after short-listing the project and has reached terms mutually agreeable to both parties.

ANALYSIS AND DISCUSSION



Staff negotiated the attached Long-Term Resource Adequacy Agreement for the purchase of resource adequacy from the EnerSmart Chula Vista BESS, LLC project, which is a stand-alone battery-storage project in Chula Vista, CA.

Resource Adequacy would help with SDCP's internal Local Procurement targets as well as external resource adequacy and mid-term reliability compliance requirements.

Below is additional information regarding EnerSmart and the draft agreement.

Background on EnerSmart:

- EnerSmart is a local developer and has a management team with decades of experience in project development
- EnerSmart is planning to develop over 160 MW of stand-alone storage in San Diego across 12 projects
- The Chula Vista project is the first in the portfolio to reach commercial operation

Contract Overview – EnerSmart Chula Vista BESS, LLC

- Product: Local Resource Adequacy, 3 MW
- Project: 6 MW/12 MWh 2-hour lithium-ion battery energy system
- Project location: Chula Vista
- Guaranteed Initial Resource Adequacy Delivery Date: 3/31/2024
- Contract term: 10 years
- Pricing:
 - BESS – Fixed price for resource adequacy
- SDCP receives financial compensation if ESS fails to meet certain performance requirements

Community Benefits:

- ESS uses local labor when possible
- ESS used IBEW labor for the electrical portion of the Chula Vista project
- ESS projects benefit the community by providing clean energy to the grid when it's needed the most, helping to reduce the local risk of brownouts and blackouts.
- ESS provides local storage reducing the need for additional transmission to import energy

COMMITTEE REVIEW

N/A

FISCAL IMPACT



The competitive resource adequacy pricing of the agreement is confidential, but the long-term purchase of resource adequacy will provide SDCP with significant value and cost certainty over the term of this agreement.

ATTACHMENTS

Attachment A: Long-Term Resource Adequacy Agreement with EnerSmart Chula Vista BESS, LLC (redacted version for commercially sensitive information)



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**RESOURCE ADEQUACY AGREEMENT
COVER SHEET**

A. Parties

Seller: EnerSmart Chula Vista BESS LLC, a Delaware limited liability company

Buyer: San Diego Community Power, a California joint powers authority

B. Unit Information

Unit Name:	EnerSmart Chula Vista 1 & 2
Location:	Chula Vista, CA
CAISO Resource ID:	OTAY_6_ECVBT1 OTAY_6_ECVBT2
Unit SCID:	ASMT
Unit NQC:	3 MW
Unit EFC:	3 MW
Resource Type:	Battery Energy Storage System
Resource Category (1, 2, 3 or 4):	4
FCR Category (1, 2 or 3):	2
Path 26 (North or South):	SP26
Local Capacity Area (if any, as of Effective Date):	SDGE
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	TBD
Run Hour Restrictions	N/A

C. RA Product and Attributes

Throughout the Delivery Term, Seller shall provide Buyer with the Designated RA Capacity having the following attributes:

☒ RAR Attributes

☐ RAR Attributes with FCR Attributes

☐ LAR Attributes

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☒ LAR Attributes with FCR Attributes

☐ FCR Attributes

D. Delivery Term

The Delivery Term is ten (10) Contract Years.

E. Contract Quantities

The Contract Quantities for each Showing Month of the Delivery Term shall be:

RAR Attributes: [REDACTED]

LAR Attributes: [REDACTED]

FCR Attributes: [REDACTED]

F. Contract Price

The Contract Price shall be: [REDACTED]

G. Seller's Security Amounts

Development Security: [REDACTED]

Performance Security: [REDACTED]

H. Milestones

Milestone	Date for Completion
Site Control obtained	June 16, 2020
Interconnection Agreement executed	May 27, 2021
Expected Construction Start Date	September 1, 2022
Full Capacity Deliverability Status obtained	TBD
Guaranteed Initial Delivery Date	3/31/2024

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PREAMBLE

This Resource Adequacy Agreement (“Agreement”) is entered into between EnerSmart Chula Vista BESS LLC, a Delaware limited liability company (“Seller”) and **San Diego Community Power**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties,” as of [Date] (the “Effective Date”). All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Unit; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;


NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1: DEFINITIONS

- 1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.2 “Agreement” has the meaning set forth in the Preamble.
- 1.3 “Alternate Capacity” means any replacement RA Capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Product provided by the Unit; *provided*, if any portion of the Designated RA Capacity that Seller is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product), then Seller may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product).
- 1.4 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Agreement, including without limitation, the Tariff.
- 1.5 “Availability Incentive Payments” means Availability Incentive Payments as defined in the Tariff.
- 1.6 “Availability Standards” means Availability Standards as defined in the Tariff.
- 1.7 “Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or commenced against it is not stayed or dismissed

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within ninety (90) days thereafter, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

- 1.8 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.
- 1.9 “Buye” has the meaning set forth in the Preamble.
- 1.10 “CAISO” means the California Independent System Operator or its successor.
- 1.11 “CAISO Control Area” means the Control Area (as defined in the Tariff) that is operated by the CAISO.
- 1.12 “CAISO Controlled Grid” has the meaning set forth in the Tariff.
- 1.13 “CAISO Offer Requirements” has the meaning set forth in Article 4.
- 1.14 “Capacity Replacement Price” 
- 1.15 “CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.
- 1.16 “Claiming Party” has the meaning set forth in Section 3.12.
- 1.17 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
- 1.18 “Compliance Obligation” means the RAR, Local RAR, FCR, and any other resource adequacy or capacity procurement requirements imposed on LSEs by the CPUC pursuant to the Resource Adequacy Rulings, by the CAISO, by the WECC, or by any other Governmental Body having jurisdiction.
- 1.19 “Confidential Information” has the meaning set forth in Article 11.
- 1.20 “Construction Start” has the meaning set forth in Section 16.1(a).
- 1.21 “Construction Start Date” has the meaning set forth in Section 16.1(a).
- 1.22 “Contract Price” has the meaning set forth in Section F of the Cover Sheet.

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- 1.23 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Term, the amount of Product (in MWs) set forth in Section E of the Cover Sheet, which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.24 “Contract Year” means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date; and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date.
- 1.25 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.
- 1.26 “CPUC” means the California Public Utilities Commission or its successor.
- 1.27 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.28 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.29 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s.
- 1.30 “Damage Payment” means the dollar amount that equals the entire Development Security amount and any interest accrued thereon.
- 1.31 “Defaulting Party” has the meaning set forth in Section 5.1.
- 1.32 “Delivery Point” has the meaning set forth in Section 3.4.
- 1.33 “Delivery Term” means the period of Contract Years set forth on the Cover Sheet beginning on the Initial Delivery Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.
- 1.34 “Designated RA Capacity” shall be equal to, with respect to each Showing Month of the Delivery Term, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity. For avoidance of doubt, “Designated RA Capacity” shall include any and all Alternate Capacity which Seller elects to provide from one or more Replacement Units in accordance with Section 3.6.
- 1.35 “Development Cure Period” has the meaning set forth in Section 16.2(c).

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- 1.36 “Development Security” means collateral in the form of cash or a Letter of Credit in an amount set forth in Section G of the Cover Sheet.
- 1.37 “Dispute” has the meaning set forth in Section 17.10(a).
- 1.38 “Dispute Notice” has the meaning set forth in Section 17.10(a).
- 1.39 “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.40 “Effective Date” is the date set forth in the Preamble.
- 1.41 “Effective Flexible Capacity” means the capacity of a resource that can be counted towards an LSE’s Flexible Capacity Requirements, as identified from time to time by the Tariff, the Resource Adequacy Rulings, LRA, or other Governmental Body having jurisdiction.
- 1.42 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.
- 1.43 “EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.
- 1.44 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
- 1.45 “Event of Default” has the meaning set forth in Section 5.1.
- 1.46 “FCR Attributes” means, with respect to a Resource Adequacy Resource, any and all flexible resource adequacy attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the Resource Adequacy Rulings, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.
- 1.47 “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Resource and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.48 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.
- 1.49 “Flexible Capacity Category” has the meaning set forth in the Resource Adequacy Resource.
- 1.50 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the Resource Adequacy Resource, or by an LRA or other Governmental Body having jurisdiction.
- 1.51 “Flexible RA Product” has the meaning specified in Section C of the Cover Sheet.
- 1.52 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under the Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of

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Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider (i) unless such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) to the extent such curtailment is due to Transmission Provider; *provided, however*, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.

- 1.53 "Full Capacity Deliverability Status" or "FCDS" has the meaning set forth in the Tariff.
- 1.54 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.
- 1.55 "Governmental Approvals" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Body and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Unit.
- 1.56 "Governmental Body" means (a) any federal, state, local, municipal or other government; (b) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (c) any court or governmental tribunal, but in all cases, excludes both Parties.
- 1.57 "Governmental Charges" has the meaning set forth in Section 8.2.
- 1.58 "Guaranteed Initial Delivery Date" is the date set forth in Section H of the Cover Sheet, subject to extension pursuant to Section 16.2(b).
- 1.59 "Initial Delivery" has the meaning set forth in Section 16.2(a).
- 1.60 "Initial Delivery Date" means the date on which Initial Delivery is achieved.
- 1.61 "Interconnection Agreement" means the interconnection agreement entered into by Seller pursuant to which the Unit and Seller's Interconnection Facilities will be interconnected with the Transmission System during the Delivery Term.
- 1.62 "Interconnection Facilities" means the interconnection facilities, control and protective devices and metering facilities required to connect the Unit with the Transmission System in accordance with the Interconnection Agreement.
- 1.63 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

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- 1.64 “Investment Grade” means a Credit Rating of at least [REDACTED] from Moody’s (or, if such entities cease to provide Credit Ratings, from another comparable rating agency that is reasonably acceptable to the Parties).
- 1.65 “Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).
- 1.66 “Joint Powers Agreement” means that certain Joint Powers Agreement dated October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.
- 1.67 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.68 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the Resource Adequacy Rulings, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.
- 1.69 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.70 “Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least [REDACTED] with an outlook designation of [REDACTED] with an outlook designation of [REDACTED] from Moody’s, in a form as set forth in Exhibit A or as otherwise acceptable to Buyer.
- 1.71 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.
- 1.72 “LRA” has the meaning set forth in the Tariff.
- 1.73 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.74 “Milestones” has the meaning set forth in Section H of the Cover Sheet.
- 1.75 “Monthly RA Capacity Payment” has the meaning specified in Section 3.10(a) hereof.

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- 1.76 “Moody’s” means Moody’s Investor Services, Inc. or its successor.
- 1.77 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.78 “Net Qualifying Capacity” or “NQC” has the meaning set forth in the Tariff.
- 1.79 “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.80 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.81 “Notification Deadline” has the meaning set forth in Section 3.6.
- 1.82 “Notifying Party” has the meaning set forth in Section 17.10(a).
- 1.83 “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage.
- 1.84 “Participating Transmission Owner” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. The Participating Transmission Owner for purposes of this Agreement is San Diego Gas & Electric.
- 1.85 “Performance Security” means collateral in the form of cash or a Letter of Credit in an amount set forth in Section G of the Cover Sheet.
- 1.86 “Planned Outage” means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.87 “Product” has the meaning set forth in Section 3.1.
- 1.88 “Progress Report” means a report substantially in the form set forth in Exhibit F, the requirements for which are further set forth in Section 16.1(c).
- 1.89 “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes, as applicable, for the Delivery Term, as determined by the CPUC, CAISO, or other Governmental Body authorized to make such determination under Applicable Laws, including the Resource Adequacy Rulings. RA Capacity encompasses the applicable RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit.
- 1.90 “RAR” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.91 “RAR Attributes” means, with respect to a Resource Adequacy Resource, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, Resource Adequacy Rulings, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.

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- 1.92 “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or Resource Adequacy Rulings, or to an LRA having jurisdiction.
- 1.93 “Recipient Party” has the meaning set forth in Section 17.10(a).
- 1.94 “Regulatory Event” has the meaning set forth in Section 17.7.
- 1.95 “Reliability Compensation Services Tariff” has the meaning set forth in the Tariff.
- 1.96 “Replacement Capacity” has the meaning specified in Section 3.8 hereof.
- 1.97 “Replacement Unit” means a unit meeting the requirements specified in Section 3.6 hereof that is located within the CAISO Control Area and that is capable of providing Alternate Capacity. A Replacement Unit may not be a coal-fired or nuclear generating resource.
- 1.98 “Residual Unit Commitment” has the meaning set forth in the Tariff.
- 1.99 “Resource Adequacy Plan” has the meaning specified in the Tariff.
- 1.100 “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.
- 1.101 “Resold Product” has the meaning set forth in Article 12.
- 1.102 “Resource Adequacy Resource” has the meaning set forth in the Tariff.
- 1.103 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.104 “RMR Contracts” has the meaning set forth in the Tariff.
- 1.105 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.106 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Term at a specified Delivery Point.
- 1.107 “Scheduling Coordinator” has the same meaning as in the Tariff.
- 1.108 “Security Interest” has the meaning set forth in Section 14.3(a).
- 1.109 “Seller” has the meaning set forth in the Preamble.

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- 1.110** “Settlement Amount” means, with respect to the Non-Defaulting Party, the aggregate Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.
- 1.111** “Showing Month” shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the Resource Adequacy Rulings or Tariff. For illustrative purposes only, pursuant to the Resource Adequacy Rulings in effect as of the Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.112** “Site” means the real property on which the Unit is located as identified in Appendix D.
- 1.113** “Site Control” means that, for the Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.
- 1.114** “Substitution Rules” has the meaning specified in the Tariff.
- 1.115** “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count, as applicable, for RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.116** “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.117** “Term” has the meaning set forth in Section 2.1(a).
- 1.118** “Terminated Transaction” has the meaning set forth in Section 5.2.
- 1.119** “Termination Payment” has the meaning set forth in Section 5.3.
- 1.120** “Transmission Provider” means the CAISO.
- 1.121** “Transmission System” means the transmission facilities operated by the CAISO, which provide energy transmission service within the CAISO grid from the Delivery Point.
- 1.122** “Unit” shall mean the storage asset described in Section B of the Cover Sheet and Exhibit D hereof and any Replacement Units, from which Product is provided by Seller to Buyer. A Unit may not include a coal-fired or nuclear generating resource.
- 1.123** “Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of or failure to provide warnings or instructions.

ARTICLE 2: TERM; DELIVERY TERM; CONDITIONS PRECEDENT

2.1 Term.

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The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, Termination Payment, then-owing indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Development Security or Performance Security, as applicable, is released and/or returned (the “Term”). Upon Seller’s request, Buyer will promptly confirm in writing the Effective Date. All provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 17.2 (Indemnities) and any other indemnity rights survive the end of the Delivery Term for an additional twelve (12) months; (ii) all rights and obligations under Article 11 (Confidentiality) survive the end of the Delivery Term for an additional two (2) years; and (iii) all provisions relating to limitations of liability survive without limit.

2.2 Conditions Precedent to Initial Delivery Date.

Seller shall provide notice of expected Initial Delivery Date to Buyer no less than sixty (60) days in advance of such date. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Unit and to enable Seller to deliver the Product to Buyer.

(d) Seller shall have provided to Buyer a certification of Seller and a licensed professional engineer, substantially in the form attached hereto as Exhibit C, demonstrating that the Initial Delivery Date has occurred.

(e) Seller shall have provided Performance Security to Buyer as required by Section 14.2.

(f) As of the Initial Delivery Date, no Event of Default on the part of Seller shall have occurred and be continuing.

(g) Seller shall have obtained Full Capacity Deliverability Status.

(h) Subject to Section 16.2(b), Seller shall have obtained an NQC for the Unit of at least 2.85 MW.

(i) In accordance with Section 3.7(a), Seller shall have (i) submitted, or caused the Unit’s SC to submit, a notice to Buyer including Seller’s proposed Supply Plan for the first Showing Month of the Delivery Term and (ii) submitted, or caused the Unit’s SC to submit, a Supply Plan to CAISO for the first Showing Month of the Delivery Term.

(j) Seller shall have delivered to Buyer all insurance documents required under Article 15.

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(k) As of the Initial Delivery Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any.

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1 Resource Adequacy Capacity Product.

During the Delivery Term, Seller shall provide Buyer with RA Capacity from the Unit in the amount of the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Sections C and E of the Cover Sheet to this Agreement with respect to each Showing Month (the “Product”). Seller’s obligation to deliver the Contract Quantity of Product for each day of the Delivery Period is firm and will not be excused for any reason other than Force Majeure.

If the Unit is not available to provide the full amount of the Contract Quantity with respect to an applicable Showing Month for any reason other than Force Majeure, including, without limitation, any Outage or any adjustment of the RA Capacity of any Unit, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 3.6 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 3.6, then Seller shall be liable for damages and/or be required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 3.8 and 3.9 hereof.

Notwithstanding anything to the contrary herein, no energy or ancillary services associated with the Unit is required to be made available to Buyer as part of this Agreement and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Agreement. Seller retains the right to sell, pursuant to the Tariff, any RA Capacity that is in excess of the Unit’s Contract Quantity and any RAR Attributes, LAR Attributes, or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Agreement.

3.2 Seller’s and Buyer’s Obligations.

Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Designated RA Capacity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price for the Designated RA Capacity. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.3 [Reserved].

3.4 Delivery Point.

The “Delivery Point” for the Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

3.5 Planned Outages.

Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Unit as a Resource Adequacy Resource that is subject to the Availability Standards to qualify for an “Approved”

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Maintenance Outage” under the CAISO Tariff. Seller shall reimburse Buyer for any cost Buyer incurs to provide Replacement RA, as required by the CAISO, during any Planned Outages (including the cost of procuring Replacement RA for a full calendar month during any month in which a Planned Outage is planned or scheduled). Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Unit shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion.

3.6 Alternate Capacity and Replacement Units.

(a) The “Notification Deadline” for a given Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding CPUC RAR Showings, LAR Showings and/or FCR Showings, as applicable for that Showing Month, or (b) submission of the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, or if Seller desires to provide the Contract Quantity for any Showing Month from a Replacement Unit, then Seller may, at no additional cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and any Replacement Unit(s) up to an amount equal to the Contract Quantity for the applicable Showing Month; *provided*, in each case, Seller shall notify Buyer of the amount of Product that Seller will not be able to deliver from the Unit and the portion of the Contract Quantity for which Seller intends to provide Buyer with Alternate Capacity from identified Replacement Unit(s) no later than the Notification Deadline.

(c) If Seller fails to provide Buyer the Contract Quantity of Product from the Unit or a Replacement Unit for a given Showing Month during the Delivery Term, then Buyer may, but shall not be required to, purchase replacement Product from a third party.

3.7 Delivery of Product.

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause the Unit’s Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) The Designated RA Capacity is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer’s instructions, including Buyer’s instructions to withhold all or part of the Designated RA Capacity from Seller’s Supply Plan for any Showing Month during the Delivery Term, has been accepted by the CAISO. If CAISO rejects either the Supply Plan or Buyer’s Resource Adequacy Plan with respect to any part of the Designated RA Capacity in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable Notification Deadline for the relevant Showing Month.

(c) Consistent with the Substitution Rules, take all action, or cause each Unit’s Scheduling Coordinator to take all action, to allow Buyer or a subsequent purchaser under Article 12 to utilize the

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Contract Quantity during each Showing Month under the Substitution Rules, including, but not limited to, ensuring that the Designated RA Capacity being provided in the pertinent Showing Month will qualify for substitution under the Substitution Rules and providing Buyer or subsequent purchaser under Article 12 with all information needed to utilize the Substitution Rules.

3.8 Damages for Failure to Provide Designated RA Capacity.

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Agreement, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller; *provided*, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product), then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product) ("Replacement Capacity"), in either case, by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer, so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer, on the date payment would otherwise be due in respect of the Showing Month for which the failure occurred, an amount equal to the positive difference, if any, between the sum of (A) the actual cost paid by Buyer (or charged to Buyer by CAISO) for any Replacement Capacity, plus (B) the product of the Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 3.8(a). If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller pursuant to Article 6 of this Agreement.

3.9 Indemnities for Failure to Deliver Contract Quantity.

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

(a) Seller's failure to provide any portion of the Designated RA Capacity for the respective Showing Month for the Delivery Term; or

(b) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right, or a subsequent purchaser's right, to the Designated RA Capacity purchased hereunder.

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With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; *provided*, in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these costs, penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Agreement.

3.10 Monthly RA Capacity Payment.

Buyer shall make a Monthly RA Capacity Payment to Seller for the Unit, in arrears, after the applicable Showing Month. The Parties agree that all invoices under this Agreement shall be due and payable on the twentieth (20th) day of the month after the Showing Month; *provided*, if such day is not a Business Day, then such invoice will be due and payable on the next Business Day. The Unit's "Monthly RA Capacity Payment" shall be equal to the product of (i) the applicable Contract Price for that Showing Month, (ii) the Designated RA Capacity of the Product actually delivered by Seller to Buyer for the Showing Month and (iii) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

3.11 Allocation of Other Payments and Costs.

(a) Seller may retain any revenues it may receive from, and shall pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shut-down, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) any revenues for black start or reactive power services, or (v) the sale of the unit-contingent call rights on the storage capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of the Unit during the Delivery Term (including any capacity or availability revenues from RMR Contracts for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.11(a) above).

(c) In accordance with Section 3.10 of this Agreement:

(i) all such Buyer revenues described in Section 3.11(b) received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer (and upon any such payment by Seller, Seller shall be subrogated to all rights of Buyer against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Agreement.

(ii) all such Seller, or a Unit's Scheduling Coordinator, owner, or operator revenues described in Section 3.11(a)(i)-(v), but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Seller (and upon any such payment by Buyer, Buyer shall be subrogated to all rights of Seller against such Unit's Scheduling Coordinator, owner, or operator for the amount

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of such revenues paid). If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues against any future amounts it may owe to Buyer under this Agreement.

(d) If a centralized capacity market develops within the CAISO or WECC region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues. Buyer shall be responsible for any material, incremental costs of offering, bidding, submitting, or re-selling Designated RA Capacity in such centralized capacity market.

(e) Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards.

3.12 Force Majeure.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE 4: CAISO OFFER REQUIREMENTS

During the Delivery Term, except to the extent the Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of the Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO the Unit's Designated RA Capacity in compliance with the Tariff, including compliance with Minimum Sate of Charge, Day-Ahead Availability, Real-Time Availability, Must Offer Obligation, and Default Energy Bid requirements established in Article 40 of the Tariff and Seller shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Product hereunder. (the "CAISO Offer Requirements"). Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 5: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

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- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and such Party does not fully mitigate the adverse consequences as reasonably determined by the other Party of such incorrect representation or warranty to the other Party within thirty (30) days after written notice thereof;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Section 3.8 and 3.9) if such failure is not remedied within thirty (30) Business Days after written notice;
- (d) if at any time, Seller delivers or attempts to deliver Product to the Delivery Point for sale under this Agreement that was not generated by the Unit, except for Alternate Capacity;
- (e) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Term to any party other than Buyer except as expressly permitted under this Agreement;
- (f) such Party becomes Bankrupt;
- (g) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 17.3, if applicable;
- (h) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 14 hereof if such failure is not remedied within ten (10) Business Days after written notice;
- (i) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or
- (j) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:
 - (i) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least [REDACTED] by Moody's;
 - (ii) the issuer of such Letter of Credit becomes Bankrupt;
 - (iii) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

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(iv) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(v) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(vi) such Letter of Credit fails or ceases to be in full force and effect at any time;
or

(vii) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement (referred to herein as a “Terminated Transaction”) between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement; and (iii) suspend performance. If the Early Termination Date occurs before the Initial Delivery Date and Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer. If the Early Termination Date occurs after the Initial Delivery Date, or if Buyer is the Defaulting Party either before or after the Initial Delivery Date, then as soon as reasonably practicable, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transaction are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable). The Gains and Losses for a Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of the Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be [REDACTED].

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party

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pursuant to Article 14, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article 14, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the “Termination Payment”) payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within ten (10) days after such notice is effective.

5.5 Disputes with Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) days of receipt of Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; *provided, however*, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Security to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Agreement is not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

ARTICLE 6: PAYMENT AND NETTING

6.1 Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment.

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Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

6.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Sections 3.8, 3.9, or 16.2(c), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting.

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security.

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Unless the Party benefiting from Development Security and Performance Security notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article 5, all amounts netted pursuant to this Article 6 shall not take into account or include any Development Security or Performance Security which may be in effect to secure a Party's performance under this Agreement.

ARTICLE 7: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages.

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 8: GOVERNMENTAL CHARGES

8.1 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

8.2 Governmental Charges.

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Seller shall pay or cause to be paid all taxes imposed by any government authority (“Governmental Charges”) on or with respect to the Product or a transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE 9: [RESERVED]

ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS

10.1 Mutual Representations and Warranties.

On the Effective Date, each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except all permits necessary to construct, operate and maintain the Unit and sell the Product therefrom in the case of Seller;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing

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documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.

(e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(g) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and

(h) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of Product.

10.2 Buyer and Seller Covenants.

Buyer and Seller shall, throughout the Delivery Term, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Article 12. Such commercially reasonable actions shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing the Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR, and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Term the ability to deliver the Contract Quantity from the Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability” standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform it to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR so as to maintain the benefits of the bargain struck by the Parties on the Effective Date; *provided, however*, that such commercially reasonable actions shall not include any obligation that the owner or operator of the Unit undertake capital improvements, Unit enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity.

10.3 Seller Representations, Warranties and Covenants.

Seller represents, warrants and covenants to Buyer that:

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(a) Throughout the Delivery Term, the Unit qualifies as a Resource Adequacy Resource that is eligible to provide the Product pursuant to the Tariff and the Resource Adequacy Rulings;

(b) Throughout the Delivery Term, Seller owns or has the exclusive right to the RA Capacity sold under this Agreement, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(c) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;

(d) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;

(e) The Unit is within the CAISO Control Area and Seller shall maintain Site Control throughout the Delivery Term;

(f) Throughout the Delivery Term, the owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(g) Throughout the Delivery Term, the respective cumulative amounts of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred from the Unit does not exceed that Unit's RA Capacity;

(h) Throughout the Delivery Term, with respect to the RA Capacity provided under this Agreement, Seller shall, and the Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RAR, LAR, and FCR;

(i) Seller has notified the Scheduling Coordinator of the Unit that, throughout the Delivery Term, has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with this Agreement and the Tariff;

(j) Seller has notified the Scheduling Coordinator of the Unit that Seller is obligated, throughout the Delivery Term, to cause the Unit's Scheduling Coordinator to provide to the Buyer, at least fifteen (15) Business Days before the Notification Deadline, the Designated RA Capacity of the Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(k) Seller has notified the Unit's Scheduling Coordinator that, throughout the Delivery Term, Buyer is entitled to the revenues set forth in Section 3.11 of this Agreement and that such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

10.4 Buyer Representations, Warranties and Covenants.

(a) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is limited within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any

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judgment; *provided, however*, that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

ARTICLE 11: CONFIDENTIALITY

(a) Neither Party shall disclose the terms or conditions of this Agreement or information exchanged between the Parties pursuant to this Agreement (“Confidential Information”) to a third party (other than the Party’s or its Affiliates’ employees, lenders or potential lenders, investors or potential investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; *provided, however*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(b) Notwithstanding the foregoing, the Parties agree that Buyer may disclose the information pertaining to this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Agreement to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans; *provided*, each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose such information. In addition, in the event Buyer resells all or any portion of the Designated RA Capacity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information to the extent such disclosure is necessary to affect such resale transaction; *provided*, such other party agrees to keep such information confidential.

(c) Seller acknowledges that Buyer is subject to the California Constitution Article 1, Section 3, and the California Public Records Act, Cal. Gov. Code § 6250 *et seq.* (“Public Records Act”) in regard to the documents comprising this Agreement, which items may constitute public records subject to inspection and copying by the public under the authority of the California Constitution and the Public Records Act. Buyer shall, consistent with those laws, use reasonable efforts to provide Seller with notice of any third-party request to inspect and copy any of the documents that comprise this Agreement, which Seller might deem confidential and exempt from disclosure, in order that Seller may timely seek to protect those documents from disclosure to the third party. Seller acknowledges and agrees that Buyer shall not be liable to Seller if Buyer makes disclosure in accordance with the California Constitution and/or the Public Records Act before Seller has timely obtained an order to prevent Buyer from making the requested disclosure to the third party.

ARTICLE 12: BUYER’S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. If Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement (“Resold Product”), Seller agrees, and agrees to cause the Unit’s Scheduling Coordinator, to follow Buyer’s reasonable instructions with respect to providing such

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Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller's obligations under this Agreement. Seller further agrees, and agrees to cause the Unit's Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer's rights under this Agreement. If Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Unit's Scheduling Coordinator to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Agreement if Buyer had not resold the Product, including without limitation, pursuant to Sections 3.8 and 3.9.

In the event there is any Resold Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information specified below promptly following such sale (and any other information reasonably requested by Seller so that Seller may perform its obligations in this Article 12) and promptly notify Seller of any subsequent changes to such information with respect to any particular sale: (i) benefitting load serving entity SC identification number (SCID), (ii) volume (in MW) of Resold Product, and (iii) subsequent sale delivery period for Resold Product.

ARTICLE 13: COMPLIANCE OBLIGATION

The Parties acknowledge and agree that a material purpose of this Agreement is to enable Buyer to satisfy its Compliance Obligation. If, at any time during the Term, the Unit is not qualified to produce Product, including RAR Attributes, LAR Attributes, and FCR Attributes, as applicable, including due to any action by the CPUC, CAISO or any Governmental Body having jurisdiction that results in any change in Applicable Law occurring after the Effective Date that changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Buyer's Compliance Obligation (a "Compliance Issue"), the Parties shall work in good faith to revise this Agreement so that the Parties can perform their obligations regarding the purchase and sale of Product sold hereunder in order to maintain the original intent; *provided, however*, in no event shall Seller be obligated to undertake capital improvements, Unit enhancements, or the construction of new facilities. If a Compliance Issue results in the Product not being able to be counted towards Buyer's Compliance Obligation, and the Parties have not reached agreement on amendments within thirty (30) days after the initiation of discussions regarding the Compliance Issue that would allow the Product to be able to be counted towards Buyer's Compliance Obligation, Buyer may terminate this Agreement upon written notice to Seller, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party, subject to payment of any amounts owing as of the effective date of such termination.

ARTICLE 14: COLLATERAL REQUIREMENTS

14.1 Development Security.

Seller shall deliver Development Security to Buyer within ten (10) Business Days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall within ten (10) Business Days after any draw made by Buyer in accordance with this Agreement replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller,

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less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the commencement of the Delivery Period or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

14.2 Performance Security.

Seller shall deliver Performance Security to Buyer on or before the Initial Delivery Date. Seller shall maintain the Performance Security in full force and effect, and shall within ten (10) Business Days after any draws made by Buyer in accordance with this Agreement replenish the Performance Security, until the following have occurred: (a) the Delivery Period has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, termination damages, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Period, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

14.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Development Security and Performance Security, any other cash collateral and cash equivalent collateral posted under this Agreement, and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

(b) Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following:

(i) Exercise any of its rights and remedies with respect to the Development Security or Performance Security, as applicable, including any such rights and remedies under Applicable Law then in effect;

(ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security and Performance Security, as applicable; and

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(iii) Liquidate Development Security or Performance Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

ARTICLE 15: INSURANCE

15.1 Insurance.

Throughout the Term, Seller shall procure and maintain the following insurance coverage and require and cause its contractors to maintain the same levels of coverage. For the avoidance of doubt, the obligations of the Seller in this Section 15.1 constitute a material obligation of this Agreement.

(a) Workers' Compensation and Employers' Liability.

(i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Applicable Laws or statutes, California state or federal, where Seller performs Work.

(ii) Employers' liability insurance will not be less than one million dollars [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the one million dollar [REDACTED] policy limit will apply to each employee.

(b) Commercial General Liability.

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of two million dollars [REDACTED] per occurrence, and an annual aggregate of not less than five million dollars [REDACTED] endorsed to provide contractual liability in said amount (subject to policy terms and conditions), specifically covering Seller's insurable indemnity obligations under this Agreement and including Buyer as an additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement. Limits may be satisfied through a combination of primary and excess policies.

(ii) An umbrella insurance policy in a minimum limit of liability of ten million dollars [REDACTED]

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) Business Auto.

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(i) Business auto insurance for bodily injury and property damage with limits of one million dollars [REDACTED] per occurrence.

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(d) Construction All-Risk Insurance.

(i) During the construction of the Unit prior to the Initial Delivery Date, construction all-risk form property insurance covering the Unit during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(e) Contractor's Pollution Liability.

(i) If the scope of Work involves areas of known pollutants or contaminants, Seller shall maintain or require to be maintained, pollution liability coverage for bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will be at least two million dollars [REDACTED] each occurrence for bodily injury and property damage.

(iii) The policy will endorse Buyer as additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement.

15.2 Evidence of Insurance.

Within ten (10) days after the Effective Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior notice by Seller in the event of any cancellation or termination of coverage, except ten (10) days for nonpayment of premium. With the exception of Workers Compensation/Employers Liability, such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

ARTICLE 16: UNIT CONSTRUCTION AND INITIAL DELIVERY DATE

16.1 Construction of the Unit.

(a) Construction Start. "Construction Start" will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Unit, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Unit may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract (or equivalent agreements) and issued thereunder a notice to proceed or its equivalent that authorizes the contractor to

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mobilize to Site and begin physical construction of the Unit at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit B hereto, and the date certified therein shall be the "Construction Start Date."

(b) Progress Reports. The Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date and (ii) each calendar month from the first calendar month following the Construction Start Date until the Initial Delivery Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit F. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller shall also provide Buyer with any information in Seller's possession that is reasonably requested by Buyer for Buyer to demonstrate to the CPUC, CAISO, or other Governmental Bodies that Buyer has met its applicable resource adequacy requirements, including providing status reports to the CPUC with respect to the Unit.

16.2 Initial Delivery Date.

(a) Initial Delivery. "Initial Delivery" means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided notice to Buyer substantially in the form of Exhibit C. Seller shall cause Initial Delivery for the Unit to occur by the Guaranteed Initial Delivery Date, as such date may be extended by a Development Cure Period pursuant to pursuant to Section 16.2(c).

(b) Reduction to Contract Quantity. Subject to Section 2.2(h), if, on the Initial Delivery Date, Seller shall have obtained an NQC for the Unit that is less than the Contract Quantity of RAR Attributes, the Parties shall work in good faith to revise this Agreement; *provided, however*, in no event shall Seller be obligated to undertake capital improvements, Unit enhancements, or the construction of new facilities. If the Parties have not reached agreement on amendments within thirty (30) days after the initiation of discussions, either Party may terminate this Agreement upon written notice to the other Party, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party, subject to payment of any amounts owing as of the effective date of such termination and provided that Seller shall be subject to Section 16.2(f).

[REDACTED]

[REDACTED]

(c) Termination for Failure to Achieve Initial Delivery Date. If the Unit has not achieved Initial Delivery on or before the Guaranteed Initial Delivery Date, as such date may be extended by a

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Development Cure Period pursuant to pursuant to Section 16.2(c), then Buyer may terminate this Agreement. If Buyer terminates this Agreement under this Section 16.2(e), Buyer shall promptly return the unused portion of the Development Security, if any, to Seller, and neither Party shall have any continuing obligations under this Agreement except as set forth in Section 2.1.

(f) Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date. If this Agreement is terminated by either Party prior to the Initial Delivery Date for any reason other than a Buyer Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Unit to a party other than Buyer for a period of two (2) years following such termination, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Unit, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Unit) so long as the limitations contained in this Section 16.2(f) apply, unless the transferee agrees to be bound by the terms set forth in this Section 16.2(f) pursuant to a written agreement approved by Buyer in its reasonable discretion. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 16.2(f).

ARTICLE 17: MISCELLANEOUS

17.1 Title and Risk of Loss.

Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Designated RA Capacity free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

17.2 Indemnity.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with Seller's operation and/or maintenance of the Unit, including without limitation any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with Buyer's access to the Unit site, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as

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may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 17.2(a) and 17.2(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

17.3 Assignment.

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; *provided, however*, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; *provided, however*, that in the case of any such assignment pursuant to clause (ii) or clause (iii), any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. In connection with any financing or refinancing of the Unit by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry.

17.4 Governing Law and Venue.

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. Each of the Parties irrevocably and unconditionally agrees that any suit, action or other proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof shall be filed in either the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego, as appropriate (and agrees not to commence any suit, action or proceeding relating thereto except in such courts). Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof in the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego, as appropriate, and hereby further irrevocably and

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unconditionally waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment (i.e., judgment after any appeals that may be duly made) in any suit, action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

17.5 Notices.

All notices, requests, statements or payments shall be made as specified in Exhibit G. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

17.6 Mobile-Sierra.

Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall be the ‘public interest’ standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008); *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

Notwithstanding any provision of this Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

17.7 General.

This Agreement (including the exhibits, schedules and any written supplements hereto, if any) constitutes the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of

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negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; *provided, further*, that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

17.8 Audit.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Designated RA Capacity delivered hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

17.9 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

17.10 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 17.10) (a “Dispute”), any Party (the “Notifying Party”) may deliver to the other Parties (the “Recipient Party”) notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a “Dispute Notice”). The Dispute Notice shall include a schedule of the availability of the Notifying Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

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(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a brief summary of the Recipient Party's position on the Dispute and a parallel schedule of availability of the Recipient Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 17.10(a) and (b) by the expiration of the thirty (30) day period set forth in Section 17.10(b), then a Party may pursue any legal remedy available to it in accordance with this Agreement.

17.11 Execution.

A signature received via facsimile or email shall have the same legal effect as an original.

17.12 Joint Powers Authority.

Seller acknowledges and agrees that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer's members in connection with this Agreement.

17.13 Dodd-Frank Act

The Parties intend this Agreement to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

17.14 Market-Based Rate Authority.

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

17.15 Rules of Interpretation.

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

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(b) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(c) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(d) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(e) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(f) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(g) a reference to a Person includes that Person’s successors and permitted assigns;

(h) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(i) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(j) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(k) references to any amount of money shall mean a reference to the amount in United States Dollars;

(l) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(m) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(n) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

**EnerSmart Chula Vista BESS LLC, a
California Delaware limited liability
company**

**SAN DIEGO COMMUNITY POWER,
a California joint powers authority**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

[Buyer], a California joint powers authority

[Address]

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of [Buyer], a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Agreement dated as of _____ and as amended (the “Agreement”) between [Applicant] and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXX] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to *[bank email address]*] (if presented by fax it must be followed up by a phone call to us at [XXXXXX] or [XXXXXX] to confirm receipt) with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

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We hereby agree with the Beneficiary that documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*insert bank address information*], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [Buyer], Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

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[Insert officer title]

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Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [Buyer], a California joint powers authority, [Buyer address], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of _____ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of _____, (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [Buyer], a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [Buyer], a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

[Buyer]

Name and Title of Authorized Representative

Date _____

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EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“Certification”) is delivered by [Seller] (“Seller”) to San Diego Community Power, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Agreement dated [date] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer that the Construction Start (as defined in the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ____ day of _____.

[Seller]

By:_____

Its:_____

Date:_____

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EXHIBIT C: FORM OF INITIAL DELIVER DATE CERTIFICATE

This certification (“Certification”) of Initial Delivery is delivered by [Seller] (“Seller”) to San Diego Community Power, a California joint powers authority (“Buyer”) in accordance with the terms of that Agreement dated [date] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _____[DATE]_____, Seller hereby certifies and represents to Buyer the following:

- a) The Unit is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
- b) Seller has installed equipment for the Unit with a nameplate capacity of no less than 2.85 MW.
- c) The Unit is fully capable of charging, storing and discharging energy up to no less than 2.85 MW and receiving instructions to charge, store and discharge energy.
- d) Seller’s Interconnection Agreement provides for a maximum instantaneous discharge capability of no less than 2.85 MW.
- e) Authorization to parallel the Unit was obtained by the Participating Transmission Owner, PG&E on _____[DATE]_____.

SELLER:

Signature: _____

Name: _____

Title: _____

Date: _____

ENGINEER

Signature: _____

Name: _____

Title: _____

Date: _____

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EXHIBIT D: DESCRIPTION OF UNIT

The following describes the Unit to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

Unit name: EnerSmart Chula Vista 1 & 2

Resource type: Battery Energy Storage

Nameplate capacity: 6MW, 12 MWh

Location: Chula Vista, CA

Unit physical address: 3821 Main Street. Chula Vista, CA

Unit elevation: 100 feet

Unit latitude: 32 35' 40" N

Unit longitude: -116 03' 02" W

Interconnection: Otay

CAISO transmission access charge area (e.g. SDG&E):

Point of interconnection: [REDACTED]

Point of interconnection address: 3821 Main Street. Chula Vista, CA

Existing zone (e.g. SP-15): SP-15

PNode: Otay

CAISO Resource ID: OTAY_6_ECVBT1 and OTAY_6_ECVBT2

Substation: Otay

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EXHIBIT E: [RESERVED]

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EXHIBIT F: PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Unit description.
3. Site plan of the Unit.
4. Description of any material planned changes to the Unit or the Site.
5. Schedule showing progress on Unit construction generally and achieving each of the Milestones and the Initial Delivery Date.
6. Summary of activities during the previous month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to the Milestones and the Initial Delivery Date, including whether Seller is on schedule with respect to the same.
9. List of issues that are likely to potentially affect achievement of the Milestones and the Initial Delivery Date.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress.
12. Any other documentation reasonably requested by Buyer.

EXHIBIT G: NOTICES

<i>EnerSmart Chula Vista BESS LLC</i> (“Seller”)	SAN DIEGO COMMUNITY POWER, a California joint powers authority (“Buyer”)
All Notices: Street: 400 S. Sierra Ave. Suite 100 City: Solana Beach, CA. 92075 Attn: James Beach Phone: 619-877-8444 Email: james@enersmartstorage.com	All Notices: P.O. Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org
Reference Numbers: Duns: Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Eric Wheatley, VP Finance Phone: 704-763-8642 E-mail: eric.wheatley@enersmartstorage.com	Invoices: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments: Attn: Eric Wheatley, VP Finance Phone: 704-763-8642 E-mail: eric.wheatley@enersmartstorage.com	Payments: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Wire Transfer: [REDACTED]	Wire Transfer: [REDACTED]



SAN DIEGO COMMUNITY POWER Board Director Initiated Item – Item 7

To: San Diego Community Power Board of Directors

From: San Diego City Council Member Joe La Cava, Chair of the SDCP Board

Subject: General Counsel

Date: August 24, 2023

RECOMMENDATION

Provide feedback to the Board Chair and to Staff on whether the Board should continue outsourcing General Counsel or pursue an in-house General Counsel and whether to request staff to analyze options and come back with a recommendation to the Board.

BACKGROUND

On October 1, 2019, the Founding Members of San Diego Community Power (SDCP) adopted the Joint Powers Agreement (JPA) which was amended and restated on December 16, 2021. Section 4.5.3 of the JPA specifies that one of the general purposes of the SDCP Board of Directors (Board) is to retain legal counsel.

Section 5.6 of the JPA further specifies that the Board shall appoint a qualified person to act as SDCP's General Counsel, who shall not be a member of the Board, or an elected official or employee of a Party. The JPA is otherwise silent on whether the counsel is to be an outside contractor or an employee of SDCP.

On October 31, 2019, the Board discussed the need to retain legal support as soon as possible. Subsequently an ad-hoc committee made up of former Board members Steve Padilla and Monica Montgomery Steppe was created to support the Interim Executive Officer in this effort. The Board members and Interim Executive Officer agreed upon an approach to directly solicit proposals from firms in order to execute an agreement and secure General Counsel support.

Staff requested proposals/letters of engagement from several firms with relevant experience, all but one of whom were unavailable due to capacity or potential conflicts of interest. Ultimately, Best Best & Krieger (BB&K) responded with both availability and the expertise needed to provide General Counsel legal services for. BB&K has extensive experience with municipal/public agency clients as well as experience with Community Choice Energy programs in California.

Finally, on November 21, 2019, SDCP entered into a 13-month professional services agreement (Agreement) with BB&K commencing on December 1, 2019 and for a not-to-exceed amount of \$120,000. Under the legal services agreement, BB&K served as General Counsel to SDCP but did not provide energy or regulatory law advice unless requested in writing by the Chief Executive Officer.

On August 27, 2020, the Board amended the Agreement to be through June 30, 2021, in an amount of \$120,000 for general-counsel services and an additional \$120,000 for legal review of power supply and vendor contracts. Subsequently, on May 27, 2021, the board issued a third amendment to the Agreement to extend the contract through June 30, 2022, with a total not-to-exceed amount of \$300,000. Finally, on April 28, 2022, the Board approved a fourth amendment to the Agreement without a not-to-exceed amount and term limit in line with the philosophy of general-counsel services provided to other entities. Separately Keys & Fox, a specialized law firm, currently provides legal review of power supply contracts and regulatory support.

Best organizational practice suggests revisiting outside services every few years. BB&K having served nearly 4 years as SDCP's outside General Counsel raises the question of whether to continue to renew their contract annually, re-open a search for an outside General Counsel, or consider instead an in-house General Counsel.

SDCP has grown rapidly since its founding in 2019, transitioning from a start-up to a stable organization. SDCP is currently a 40 person agency, growing to over 60 by the end of the 2024 Fiscal year. We have fully enrolled all 7 Member Agencies and manage an approximately \$1.2 Bn budget. Other agencies this size (Clean Power Alliance, Marin Clean Energy) have already hired in-house counsel and often have a legal team of two or three staff.

ANALYSIS AND DISCUSSION

External General Counsel:

External General Counsel is often more cost-effective than in-house General Counsel, primarily because they have a diverse set of expertise that can be called upon quickly under a variety of circumstances and without the need for new SOWs or separate contracts. External General Counsel can often therefore provide responses faster within these different areas because of the variety of legal expertise within the firm that can be quickly drawn upon without the need for additional contracting. An outside GC firm, as in the case of BB&K, also provides both a primary GC as well as an assistant GC.

In FY 2022-23, BB&K had expenditures totaling \$330,000. Based on BB&K's current burn rate, inflation and the anticipated growth of SDCP, SDCP has budgeted \$450,000 for general counsel services in FY 2023-24. This budget not only covers general counsel services but will also provide expertise from other practice areas as needed. For example, some of these areas include, but are not limited to:



- ARC: Advanced Records Center
- Bankruptcy & Creditors' Rights
- Eminent Domain
- Environmental Law & Natural Resources
- Government Affairs
- Labor & Employment
- Municipal Law
- Native American Law
- Public Finance
- Real Estate
- Special Districts

An in-house General Counsel, by contrast, as a single individual, will likely have more limited legal expertise.

Separately, SDCP also contracts for specialized legal council to review its power supply contracts and engage in specific legislative and regulatory proceedings (Keys & Fox).

We expect the legal needs of SDCP to continue to increase in future years as we bring on a variety of programs and work with our communities, businesses, and member agencies to catalyze construction of distributed renewable energy resources throughout the county.

In-House General Counsel:

The role of the in-house General Counsel is thought to differ from that of an external GC, primarily in the full-time dedication they can offer to the organization and its priorities, the strategic support they can provide to the executive team, and the additional leadership they can bring to the organization as a whole.

Intentional focus on organizational priorities:

Productivity and efficiency will likely increase with an in-house General Counsel leading, interacting and communicating with outside legal counsel as needed. SDCP's growth will see the need for additional legal support as we begin to launch additional contracting, as well as procurement around programs and other ongoing current and new initiatives. In-house General Counsel can help to determine what issues require outside legal expertise or if issues can be addressed in-house. This efficiency will benefit SDCP leadership providing back valuable time for leadership to focus on their priorities. Another advantage of in-house General Counsel is that we add a legal dimension to key decisions, which should improve the organization's risk management profile.

Strategic support:



In-house General Counsel can provide an added strategic decision-making element focused on the organization's needs without potential conflict of interest or outside influence. In-house General counsel can also provide support with important business decisions and strategic business planning.

Internal Leadership Partner:

Outside General Counsel can be a strong advisor with expertise in multiple areas of practice, however, an internal attorney is a partner, where the organization in the eyes of outside counsel is a client. The mindset of in-house General Counsel is different. The best in-house counsel works as part of the executive leadership team and an extension of the Board, interacting with peers, staff and Board members, not with "clients." In-house General Counsel will have an aligned objective to support and protect the organization in both strategy and tactical priorities. Their legal background and industry experience may better align with the organization's, understanding issues from the ground up (i.e. direct, internal public agency, utility experience).

Comprehensive, Proactive Support:

In-house General Counsel will be able to better understand the details and relationships of SDCP as their core role. They will experience daily, the details with the team and therefore will be able to provide more comprehensive support than situational or project-specific advice. In-house General Counsel can provide comprehensive advice based on the entire set of organizational considerations and legal questions at issue.

Solutions Support:

Outside General Counsel typically provides advice on what the organization cannot do. In-house General Counsel is more likely to provide a mindset that focuses on solutions while protecting SDCP from legal risks. This will further encourage team members to seek legal advice from its in-house General Counsel early and often – creating efficiencies in administration and implementation.

In house General Counsel can provide additional support and leadership regarding situations with a particular focus diplomacy, conflict resolution and team building, all required skills to represent SDCP's interests while acting as an objective, unifying presence with a variety of stakeholders.

Confidence and Conscience:

In-house General Counsel will not address every issue but will operate as the organization's conscience. A trusted advisor on the team to guide decisions, help manage crises and risks, and provide sound legal and organizational advice. And most importantly are the issues that arise when the in-house General Counsel also has an internal stake in the organization.



FISCAL IMPACT

SDCP staff would want to further analyze the fiscal impact of in-housing General Counsel. The \$450,000 of budgeted general-counsel services for FY2023-2024 can be transitioned in part to support a permanent in-house General Counsel. If a switch to in-house General Counsel is pursued, it is likely that SDCP will need to outsource certain legal services (labor & employment, Native American law, etc.) and would continue to retain current Outside Counsel in a transitional role for support and institutional knowledge transfer.

SDCP already has an on-going contract with Futura Energy Group, LLC for recruitment services, and there is sufficient funding to engage in an in-house GC search in FYE 24.

ATTACHMENTS N/A



GLOSSARY OF TERMS

AB – Assembly Bill - An Assembly Bill is a piece of legislation that is introduced in the Assembly. In other words, the Assembly, rather than the Senate, is the house of origin in the legislature for the legislation. In California, it is common for legislation to be referred to by its house of origin number (such as, AB 32) even once it becomes law.

AL – Advice Letter - An Advice Letter is a request by a CPUC jurisdictional entity for Commission approval, authorization, or other relief.

ALJ – Administrative Law Judge - ALJs preside over CPUC cases to develop the evidentiary record and draft proposed decisions for Commission action.

ARB – Air Resources Board - The California Air Resources Board (CARB or ARB) is the "clean air agency" in the government of California. CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change.

AReM – Alliance for Retail Energy Markets - a not for profit corporation that advocates for continued development of successful customer choice in retail energy markets and provides a focused voice for competitive energy retailers and their customers in selected public policy forums on the state level. AREM represented direct access providers such as Constellation NewEnergy and Direct Energy.

BayREN - Bay Area Regional Energy Network - BayREN offers region-wide energy programs, services and resources to members of the public by promoting energy efficient buildings, reducing carbon emissions and building government capacity.

CAISO – California Independent System Operator - a non-profit independent system operator that oversees the operation of the California bulk electric power system, transmission lines and electricity market generated and transmitted by its members (~80% of California's electric flow). Its stated mission is to "operate the grid reliably and efficiently, provide fair and open transmission access, promote environmental stewardship and facilitate effective markets and promote infrastructure development." CAISO is regulated by FERC and governed by a five-member governing board appointed by the governor.

CALCCA – California Community Choice Association - Association made up of Community Choice Aggregation (CCA) groups which represents the interests of California's community choice electricity providers.

CALSEIA – California Solar Energy Industries - CALSEIA represents more than 200 companies doing solar-related business in California, including manufacturers, distributors, installation contractors, consultants, and educators. Members' annual dues support professional staff and a lobbyist who represent the common interests of California's solar industry at the Legislature, Governor's Office, and state and local agencies.

CALSLA – California City County Street Light Association - statewide association representing cities, counties and towns before the CPUC that is committed to maintaining fair and equitable street light electric rates and facilities charges, and disseminating street light related information.

CAM – Cost Allocation Mechanism - the cost recovery mechanism to cover procurement costs incurred in serving the central procurement function.

CARB – California Air Resources Board – The CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change in California.

CARE – California Alternative Rates for Energy - A State program for low-income households that provides a 30% discount on monthly energy bills and a 20% discount on natural gas bills. CARE is funded through a rate surcharge paid by all other utility customers.

CBE – Communities for a Better Environment - environmental justice organization that was founded in 1978. The mission of CBE is to build people's power in California's communities of color and low-income communities to achieve environmental health and justice by preventing and reducing pollution and building green, healthy and sustainable communities and environments.

CCA – Community Choice Aggregator - A community choice aggregator, sometimes referred to as community choice aggregation, allows local governments to procure power on behalf of their residents, businesses, and municipal accounts from an alternative supplier while still receiving transmission and distribution service from their existing utility provider. CCAs are an attractive option for communities that want more local control over their electricity sources, more green power than is offered by the default utility, and/or lower electricity prices. By aggregating demand, communities gain leverage to negotiate better rates with competitive suppliers and choose greener power sources.

CCSF – City and County of San Francisco - The City and County of San Francisco often engage in joint advocacy before the CPUC. San Francisco operates CleanPowerSF, a CCA.

CEC – California Energy Commission - the primary energy policy and planning agency for California, whose core responsibilities include advancing state energy policy, achieving energy efficiency, investing in energy innovation, developing renewable energy, transforming transportation, overseeing energy infrastructure and preparing for energy emergencies.

CEE – Coalition for Energy Efficiency - non-profit comprised of US and Canadian energy efficiency administrators working together to accelerate the development and availability of energy efficient products and services.

CLECA – California Large Energy Consumers Association - an organization of large, high load factor industrial customers located throughout the state; the members are in the cement, steel, industrial gas, pipeline, beverage, cold storage, food packaging, and mining industries, and share the fact that electricity costs comprise a significant portion of their costs of production. Some members are bundled customers, others are Direct Access (DA) customers, and some are served by Community Choice Aggregators (CCAs); a few members have onsite renewable generation.

CPUC – California Public Utility Commission - state agency that regulates privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies, in addition to authorizing video franchises.



C&I – Commercial and Industrial – Business customers. C&I customers generally consume much higher volumes of electricity and gas. Many utilities segment their C&I customers by energy consumption (small, medium and large).

CP – Compliance Period – Time period to become RPS compliant, set by the CPUC (California Public Utilities Commission)

DA – Direct Access – An option that allows eligible customers to purchase their electricity directly from third party providers known as Electric Service Providers (ESP).

DA Cap – the maximum amount of electric usage that may be allocated to Direct Access customers in California, or more specifically, within an Investor-Owned Utility service territory.

DACC – Direct Access Customer Coalition a regulatory advocacy group comprised of educational, governmental, commercial and industrial customers that utilize direct access for all or a portion of their electrical energy requirements

DA Lottery – a random drawing by which DA waitlist customers become eligible to enroll in DA service under the currently-applicable Direct Access Cap.

DA Waitlist – customers that have officially registered their interest in becoming a DA customer but are not yet able to enroll in service because of DA cap limitations.

DAC – Disadvantaged Community - Disadvantaged communities refers to the areas throughout California which most suffer from a combination of economic, health, and environmental burdens. These burdens include poverty, high unemployment, air and water pollution, presence of hazardous wastes as well as high incidence of asthma and heart disease. One way that the state identifies these areas is by collecting and analyzing information from communities all over the state. CalEnviroScreen, an analytical tool created by the California Environmental Protection Agency (CalEPA), combines different types of census tract-specific information into a score to determine which communities are the most burdened or "disadvantaged."

DASR – Direct Access Service Request – Request submitted by C&I customers to become direct access eligible.

Demand - The rate at which electric energy is delivered to or by a system or part of a system, generally expressed in kilowatts (kW), megawatts (MW), or gigawatts (GW), at a given instant or averaged over any designated interval of time. Demand should not be confused with Load or Energy.

DER – Distributed Energy Resource – A small-scale physical or virtual asset (e.g. EV charger, smart thermostat, behind-the-meter solar/storage, energy efficiency) that operates locally and is connected to a larger power grid at the distribution level.

Distribution - The delivery of electricity to the retail customer's home or business through low voltage distribution lines.

DLAP – Default Load Aggregation Point – In the CAISO's electricity optimization model, DLAP is the node at which all bids for demand should be submitted and settled.



DR – Demand Response - An opportunity for consumers to play a significant role in the operation of the electric grid by reducing or shifting their electricity usage during peak periods in response to time-based rates or other forms of financial incentives.

DRP – Distributed Resource Plans - plans that are required by statute that are intended to identify optimal locations for the deployment of distributed resources.

DWR – Department of Water Resources – DWR manages California’s water resources, systems, and infrastructure in a responsible, sustainable way.

ECR – Enhanced Community Renewable - An IOU program that reflects the "Community Solar" model of renewable energy purchasing. Customers sign up to purchase a portion of a local solar project directly from a Developer at a level that meets at least 25% of their monthly electricity demand, but up to 100%. The customer will pay the Developer for the subscribed output, and receive a credit on their utility bill that reflects their enrollment level.

ED – Energy Division - The CPUC's Energy Division develops and administers energy policy and programs to serve the public interest, advise the Commission, and ensure compliance with the Commission decisions and statutory mandates.

EE – Energy Efficiency- the use of less energy to perform the same task or produce the same result. Energy-efficient homes and buildings use less energy to heat, cool, and run appliances and electronics, and energy-efficient manufacturing facilities use less energy.

ELCC – Effective Load Carrying Capacity – The additional load met by an incremental generator while maintaining the same level of system reliability. For solar and wind resources the ELCC is the amount of capacity which can be counted for Resource Adequacy purposes.

EPIC – Electric Program Investment Charge – The EPIC program was created by the CPUC to support investments in clean energy technologies that provide benefits to the electricity ratepayers of PG&E, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE)

ERRA – Energy Resource Recovery Account – ERRA proceedings are used to determine fuel and purchased power costs which can be recovered in rates. The utilities do not earn a rate of return on these costs, and only recover actual costs. The costs are forecast for the year ahead. If the actual costs are lower than forecast, then the utility gives money back, and vice versa.

ES – Energy Storage - the capture of energy produced at one time for use at a later time to reduce imbalances between energy demand and energy production.

ESA – Energy Storage Agreement - means a battery services contract, a capacity contract, demand response contract or similar agreement.

ESP – Energy Service Provider - An energy entity that provides service to a retail or end-use customer.

EV – Electric Vehicle - a vehicle that uses one or more electric motors for propulsion.

FCR – Flexible Capacity Requirements - “Flexible capacity need” is defined as the quantity of resources needed by the CAISO to manage grid reliability during the greatest three-hour continuous ramp in each month. Resources will be considered as “flexible capacity” if they can sustain or increase output, or reduce ramping needs, during the hours of “flexible need.” “FCR”



means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions.

GHG – Greenhouse gas - water vapor, carbon dioxide, tropospheric ozone, nitrous oxide, methane, and chlorofluorocarbons (CFCs). A gas that causes the atmosphere to trap heat radiating from the earth. The most common GHG is Carbon Dioxide, though Methane and others have this effect as well.

GRC – General Rate Case – Proceedings used to address the costs of operating and maintaining the utility system and the allocation of those costs among customer classes. For California's three large IOUs, the GRCs are parsed into two phases. Phase I of a GRC determines the total amount the utility is authorized to collect, while Phase II determines the share of the cost each customer class is responsible and the rate schedules for each class. Each large electric utility files a GRC application every three years for review by the Public Advocates Office and interested parties and approval by the CPUC.

GTSR – Green Tariff Shared Renewables - The GTSR program enables customers to receive 50 to 100 percent of their electricity demand from renewable sources. The GTSR program has two components: the Green Tariff (GT) component and the Enhanced Community Renewables (ECR) component. Through GT, a customer may pay the difference between their current generation charge and the cost of procuring 50 to 100 percent renewables. With ECR, a customer agrees to purchase a share of a community renewable (typically solar) project directly from a developer, and in exchange will receive a credit from their utility for the customer's avoided generation procurement.

GWh – Gigawatt-hour - The unit of energy equal to that expended in one hour at a rate of one billion watts. One GWh equals 1,000 megawatt-hours.

ICA – Integration Capacity Analysis - The enhanced integrated capacity and locational net benefit analysis quantifies the capability of the system to integrate Distributed Energy Resources (DERs) within the distribution system. Results are dependent on the most limiting element of the various power system criteria such as thermal ratings, power quality, system protection limits and safety standards of existing equipment.

IDER – Integrated Distributed Energy Resources – A CPUC proceeding that aims to more effectively coordinate the integration of demand-side resources in order to better meet customer and grid needs, while enabling California to attain its greenhouse gas reduction goals.

IDSMD – Integrated Demand-Side Management - an approach that joins together all the resources utilities have at their disposal to plan, generate and supply electricity in the most efficient manner possible.

IEP – Independent Energy Producers – California's oldest and leading nonprofit trade association, representing the interest of developers and operators of independent energy facilities and independent power marketers.

IMD – Independent Marketing Division - Under state law, IOUs are prohibited from lobbying or marketing on community choice unless the IOU forms an independent marketing division funded by shareholders rather than ratepayers. SDG&E' and its parent company Sempra were permitted by the CPUC to create such an independent marketing division, which allowed SDG&E to lobby against plans to create a CCA program.

IOU – Investor-Owned Utility – A private electricity and natural gas provider, such as SDG&E, PG&E or SCE, which are the three largest IOUs in California.



IRP – Integrated Resource Plan – A plan which outlines an electric utility’s resource needs in order to meet expected electricity demand long-term.

kW – Kilowatt – Measure of power where power (watts) = voltage (volts) x amperage (amps) and 1 kW = 1000 watts

kWh – Kilowatt-hour – This is a measure of consumption. It is the amount of electricity that is used over some period of time, typically a one-month period for billing purposes. Customers are charged a rate per kWh of electricity used.

LCE – Lancaster Choice Energy - the CCA that serves the City of Lancaster, California.

LCFS – Low Carbon Fuel Standard – A CARB program designed to encourage the use of cleaner low-carbon fuels in California, encourage the production of those fuels, and therefore, reduce greenhouse gas emissions.

LCR – Local (RA) Capacity Requirements – The amount of Resource Adequacy capacity required to be demonstrated in a specific location or zone.

LMP – Locational Marginal Price – Each generator unit and load pocket is assigned a node in the CAISO optimization model. The model will assign a LMP to the node in both the day-ahead and real time market as it balances the system using the least cost. The LMP is comprised of three components: the marginal cost of energy, congestion and losses. The LMP is used to financially settle transactions in the CAISO.

LNBA – Locational Net Benefits Analysis - a cost-benefit analysis of distributed resources that incorporates location-specific net benefits to the electric grid.

Load - An end use device or customer that receives power from an energy delivery system. Load should not be confused with Demand, which is the measure of power that a load receives or requires. See Demand.

LSE – Load-serving Entity – Entities that have been granted authority by state, local law or regulation to serve their own load directly through wholesale energy purchases and have chosen to exercise that authority.

LTPP – Long-Term Procurement Rulemaking - This is an “umbrella” proceeding to consider, in an integrated fashion, all of the Commission’s electric procurement policies and programs.

MCE – Marin Clean Energy - the first CCA in California that began serving customers in 2010. They serve customers in Contra Costa, Marin, Napa and Solano counties in Northern California.

MEO – Marketing Education and Outreach - a term generally used to describe various strategies to inform customers, such as to motivate consumers to take action on energy efficiency or conservation measures and change their behavior.

MW – Megawatt – measure of power. A megawatt equals 1,000 kilowatts or 1 million watts.

MWH – Megawatt-hour – measure of energy

NAESCO – National Association of Energy Service Companies - – an advocacy and accreditation organization for energy service companies (ESCOs). Energy Service Companies



contract with private and public sector energy users to provide cost-effective energy efficiency retrofits across a wide spectrum of client facilities.

NBC – Non-Bypassable Charge - fees that are paid on every kilowatt-hour of electricity that is consumed from the grid. These charges can be used to fund things like energy assistance programs for low-income households and energy efficiency programs. These charges apply even if customers buy grid-supplied power from an outside power company such as a CCA.

NDA – Non-Disclosure Agreement - a contract by which one or more parties agree not to disclose confidential information that they have shared with each other.

NEM – Net Energy Metering – A program in which solar customers receive credit for excess electricity generated by solar panels.

NRDC – Natural Resources Defense Council - non-profit international environmental advocacy group.

NP-15 – North Path 15 – NP-15 is a CAISO pricing zone usually used to approximate wholesale electricity prices in northern California in PG&E's service territory.

OIR – Order Instituting Rulemaking - A procedural document that is issued by the CPUC to start a formal proceeding. A draft OIR is issued for comment by interested parties and made final by vote of the five Commissioners of the CPUC.

OSC – Order to Show Cause - order requiring an individual or entity to explain, justify, or prove something.

ORA – Office of Ratepayer Advocates - the independent consumer advocate within the CPUC, now called Public Advocates office.

PA – Program Administrator (for EE Business Plans) IOUs and local government agencies authorized to implement CPUC-directed Energy Efficiency programs.

PCE – Peninsula Clean Energy Authority - CCA serving San Mateo County and all 20 of its cities and towns as well as the City of Los Banos.

PCC1 – RPS Portfolio Content Category 1 – Bundled renewables where the energy and REC are dynamically scheduled into a California Balancing Authority (CBA) such as the CAISO. Also known as "in-state" renewables.

PCC2 – RPS Portfolio Content Category 2 – Bundled renewables where the energy and REC are from out-of-state and not dynamically scheduled to a CBA.

PCC3 – RPS Portfolio Content Category 3 – Unbundled REC

PCIA or "exit fee" - Power Charge Indifference Adjustment (PCIA) is an "exit fee" based on stranded costs of utility generation set by the California Public Utilities Commission. It is calculated annually and assessed to customers of CCAs and paid to the IOU that lost those customers as a result of the formation of a CCA.

PCL – Power Content Label – A user-friendly way of displaying information to California consumers about the energy resources used to generate the electricity they sell, as required by AB 162 (Statute of 2009) and Senate Bill 1305 (Statutes of 1997).



PD – Proposed Decision – A procedural document in a CPUC Rulemaking that is formally commented on by parties to the proceeding. A PD is a precursor to a final Decision voted on by the five Commissioners of the CPUC.

PG&E – Pacific Gas & Electric - the IOU that serves 16 million people over a 70,000 square mile service area in Northern California.

PHC – Prehearing Conference - CPUC hearing to discuss the scope of a proceeding among other matters. Interested stakeholders can request party status during these.

Pnode – Pricing Node – In the CAISO optimization model, it is a point where a physical injection or withdrawal of energy is modeled and for which a LMP is calculated.

PPA – Power Purchase Agreement – A contract used to purchase the energy, capacity and attributes from a renewable resource project.

PRP – Priority Review Project - transportation electrification pilot projects approved by the CPUC pursuant to SB 350.

PRRR – Progress on Residential Rate Reform – Pursuant to a CPUC decision, the IOUs must submit to the CPUC and parties periodic updates on the progress of their efforts to assist customers with residential rate design changes related to rate reform, including tier collapse and transition to a default time of use rate.

PUC – Public Utilities Code - California statute that contains 33 Divisions, and the range of topics within this Code includes natural gas restructuring, private energy producers, telecommunication services, and specific municipal utility districts and transit authorities. Primary statute for governance of utilities as well as CCAs in California.

PURPA – Public Utilities Regulatory Policy Act - federal statute passed by Congress to encourage fuel diversity via alternative energy sources and to introduce competition into the electric sector. It was meant to promote energy conservation (reduce demand) and promote greater use of domestic energy and renewable energy (increase supply). The law was created in response to the 1973 energy crisis.

RA – Resource Adequacy - Under its Resource Adequacy (RA) program, the California Public Utilities Commission (CPUC) requires load-serving entities—both independently owned utilities and electric service providers—to demonstrate in both monthly and annual filings that they have purchased capacity commitments of no less than 115% of their peak loads.

RAM – Renewables Auction Mechanism - a procurement program the Investor-owned Utilities (IOUs) may use to procure RPS eligible generation. The IOUs may use RAM to satisfy authorized procurement needs, for example, system Resource Adequacy needs, local Resource Adequacy needs, RPS needs, reliability needs, Local Capacity Requirements, Green Tariff Shared Renewables needs, and any need arising from Commission or legislative mandates.

RE – Renewable Energy - Energy from a source that is not depleted when used, such as wind or solar power.

REC - Renewable Energy Certificate - A REC is the property right to the environmental benefits associated with generating renewable electricity. For instance, homeowners who generate solar



electricity are credited with 1 solar REC for every MWh of electricity they produce. Utilities obligated to fulfill an RPS requirement can purchase these RECs on the open market.

RES-BCT – Renewables Energy Self-Generation Bill Credit Transfer - This program enables local governments and universities to share generation credits from a system located on one government-owned property with billing accounts at other government-owned properties. The system size limit under RES-BCT is 5 MW, and bill credits are applied at the generation-only portion of a customer's retail rate.

RFO – Request for Offers a competitive procurement process used by organizations to solicit the submission of proposals from interested parties in response to a scope of services.

RPS - Renewable Portfolio Standard - Law that requires CA utilities and other load serving entities (including CCAs) to provide an escalating percentage of CA qualified renewable power (culminating at 33% by 2020) in their annual energy portfolio.

SB – Senate Bill - a piece of legislation that is introduced in the Senate. In other words, the Senate, rather than the Assembly, is the house of origin in the legislature for the legislation.

SCE – Southern California Edison - the large IOU that serves the Los Angeles and Orange County area.

SCP – Sonoma Clean Power Authority - CCA serving Sonoma County and surrounding areas in Northern California.

SDG&E – San Diego Gas & Electric - the IOU that serves San Diego county, they own the infrastructure that delivers SDCP energy to customers.

SGIP – Self-Generation Incentive Program – A program which provides incentives to support existing, new, and emerging distributed energy resources (storage, wind turbines, waste heat to power technologies, etc.)

SUE – Super User Electric - electric surcharge that's intended to penalize consumers for excessive energy use.

SVCE – Silicon Valley Clean Energy - CCA serving Silicon Valley Area.

TCR EPS Protocol – The Climate Registry Electric Power Sector Protocol – Online tools and resources provided by The Climate Registry to assist organizations to measure, report, and reduce carbon emissions.

TE – Transportation Electrification - For the transportation sector, electrification means replacing fossil fuels with electricity as the means of powering light-duty vehicles, medium- and heavy-duty trucks, and buses. The primary goal is to reduce greenhouse gas (GHG) emissions and, ultimately, contribute to mitigating the effects of climate change on the planet.

Time-of-Use (TOU) Rates — The pricing of delivered electricity based on the estimated cost of electricity during a particular time-block. Time-of-use rates are usually divided into three or four time-blocks per 24 hour period (on-peak, mid-peak, off-peak and sometimes super off-peak) and by seasons of the year (summer and winter). Real time pricing differs from TOU rates in that it is based on actual (as opposed to forecasted) prices that may fluctuate many times a day and are weather sensitive, rather than varying with a fixed schedule.



TM – Tree Mortality - refers to the death of forest trees and provides a measure of forest health. In the context of energy, the CPUC is tasked with utilizing its authority to extend contracts and take actions to authorize new contracts on bioenergy facilities that receive feedstock from high hazard zones.

TURN – The Utility Reform Network - A ratepayer advocacy group charged with ensuring that California IOUs implement just and reasonable rates.

Unbundled RECs - Renewable energy certificates that verify a purchase of a MWH unit of renewable power where the actual power and the certificate are “unbundled” and sold to different buyers.

VPP – Virtual Power Plant – A cloud-based network that leverages an aggregation of distributed energy resources (DERs) to shift energy demand or provide services to the grid. For example, thousands of EV chargers could charge at a slower speed and hundreds of home batteries could discharge to the grid during a demand peak to significantly reduce the procurement of traditional supply resources.

VAMO – Voluntary Allocation, Market Offer - the process for SDG&E to allocate a proportional share of their renewable portfolio to SDCP and other LSEs within the service territory.

