



AGENDA

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

December 16, 2021
5:00 p.m.

The meeting will proceed as a teleconference meeting in compliance with waivers to certain provisions of the Brown Act provided for under Government Code section 54953(e)(1)(A), in relation to the COVID-19 State of Emergency and recommended social distancing measures. There will be no location for in-person attendance. In compliance with the Brown Act, SDCP is providing alternatives to in-person attendance for viewing and participating in the meeting. Further details are below.

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 as a whole through the Chair. Comments may be provided in one of the following manners:

1. **Providing Oral Comments During Meeting.** To provide 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. Please be aware that the Chair has the authority to reduce equally each speaker's time to accommodate a large number of speakers.
2. **Written Comments.** Written public comments must be submitted prior to the start of the meeting by using this ([web 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

Pledge of Allegiance

Ceremonial Oath of Office

Roll Call

Report from Closed Session

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 Agenda for discussion. A member of the public may comment on any item on the Consent Calendar in either manner described above.

- 1. Approval of Findings to Continue Holding Remote/Teleconference Meetings Pursuant to Assembly Bill 361**
- 2. Approval of 2022 Board Meeting Schedule**
- 3. Receive and File Treasurer's Report for Period Ending 10/31/2021**
- 4. Amend Community Advisory Committee (CAC) Membership Terms and Criteria, Membership Application, and Receive Update on Application Timeline and Appointment**
- 5. Approval of Renewable Energy Self-Generation Bill Credit Transfer (RES-BCT) Tariff**
- 6. Update on Back Office Metrics/Dashboard**
- 7. Approval of Remainder of Delinquency Policy for Customers**
- 8. Approval of Amendment to the SDCP Energy Risk Management Policy to Authorize the CEO to Approve and Execute Administrative Amendments to Power Contracts**

Information Reports / Updates

The following items are reports and are placed on the Agenda for the Board to receive and file or to 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.

- 9. Update on CEO Search Ad Hoc Committee Efforts**
- 10. Operations and Administration Report from the Interim Chief Executive Officer**
- 11. Update on Regulatory and Legislative Affairs**
- 12. Update on Power Resources and Local Renewable Energy and Energy Storage Request for Information**

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.

13. Approval of Amended and Restated Joint Powers Agreement and Bylaw Revisions

Recommendation: Approve Amended and Restated Joint Powers Agreement and conforming revisions to Bylaws by two-thirds vote.

14. Approval of Renewable Power Purchase Agreement with Duran Mesa, LLC

Recommendation: Approve Renewable Power Purchase Agreement with Duran Mesa, LLC

15. Approval of Updates to the Feed-in-Tariff (FIT) Schedule and Delegate Authority to Interim Chief Executive Officer or their Designee to Execute and Amend the FIT Power Purchase Agreements

Recommendation: Approve feed-in-tariff (FIT) schedule and delegate authority to Interim Chief Executive Officer or their designee to execute FIT Power Purchase Agreement.

16. Update on 2022 Rate/Power Charge Indifference Adjustment (PCIA) Projected Changes

Recommendation: Receive and file 2022 rates and provide direction to staff.

Reports by Management 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. Previously, public records were available for inspection at the City of San Diego Sustainability Department, located at 1200 Third Ave., Suite 1800, San Diego, CA 92101. However, due to the Governor's Executive Orders N-25-20 and N-29-20 and the need for social distancing, in-person inspection is now suspended. Public records, including agenda-related documents, can instead be requested electronically at info@sdcommunitypower.org or by mail to SDCP, 815 E Street, Suite 12716, San Diego, CA 92112. The documents may also be posted at the above website.



SAN DIEGO COMMUNITY POWER Staff Report – Item 2

To: San Diego Community Power Board of Directors

From: Kimberly Isley, Executive Assistant/Assistant Board Clerk

Subject: Approval of 2022 Board Meeting Schedule by Resolution

Date: December 16, 2021

RECOMMENDATION

Adopt a resolution to establish a regular date, time and location for San Diego Community Power (SDCP) Board Meetings for the year 2022.

BACKGROUND

Section 4.8 of the Joint Powers Authority (JPA) Agreement states that the date, hour, and place of each regular meeting shall be fixed annually by resolution of the Board.

ANALYSIS AND DISCUSSION

For the 2021 calendar year, the Board of Directors held their meetings every fourth Thursday at 5 pm, except when holidays required an adjustment, either at the San Diego City Council Chambers or virtually due to the COVID-19 pandemic. Moving forward, staff recommends maintaining the same schedule and virtual meeting format, as long as legal authority to hold remote meetings remains in place and it is required or recommended to continue social distancing measures due to the pandemic. Once it is necessary or desirable to return to in-person meetings, staff expects to return the San Diego City Council Chambers for these meetings.

Below are proposed 2022 Board meeting dates with all meetings starting at 5 pm:

- January 13, 2022 (additional meeting for rate setting)
- January 27, 2022
- January 28, 2022 (additional meeting for strategic planning)
- February 24, 2022
- March 24, 2022
- April 28, 2022
- May 26, 2022
- June 23, 2022
- July 28, 2022
- August 25, 2022
- September 22, 2022

- October 27, 2022
- November 17, 2022 (Third Thursday)
- December 15, 2022 (Third Thursday)

FISCAL IMPACT

Besides staff time, the fiscal impact to conduct virtual meetings is minimal. There is no cost to use the City of San Diego Council Chambers.

ATTACHMENTS

Attachment A: Resolution 2021-6 establishing a 2022 Board Meeting schedule.



RESOLUTION NO. 2021-6

A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER ESTABLISHING ITS REGULAR MEETING SCHEDULE FOR CALENDAR YEAR 2022

A. San Diego Community Power (SDCP) is a joint powers agency 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. The Ralph M. Brown Act (Cal. Gov. Code § 54950, *et seq.*) provides that the legislative body of each local agency shall provide, by ordinance, resolution, bylaws, or other rule, the time and place for holding its regular meetings.

C. Section 4.8 of the JPA Agreement provides that the “date, hour, and place of each regular meeting shall be fixed annually by resolution of the Board.”

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

Section 1. For calendar year 2022, regular meetings of the Board of Directors shall take place on the dates set forth below and shall begin at 5:00 P.M. All regular meetings shall take place on the 12th Floor of the San Diego City Administration Building, 202 “C” Street, San Diego, CA 92101; provided that pursuant to Government Code section 54953(e), SDCP’s meetings may be held fully or partially by videoconference or teleconference while the circumstances permitting such meetings remain in effect.

Regular Meeting Dates

January 13, 2022 (additional meeting for rate setting)

January 27, 2022

January 28, 2022 (additional meeting for strategic planning)

February 24, 2022

March 24, 2022

April 28, 2022

May 26, 2022

June 23, 2022

July 28, 2022

August 25, 2022

September 22, 2022

October 27, 2022

November 17, 2022

December 15, 2022

Section 2. Special and adjourned meetings of the Board of Directors may be called and held in the manner authorized in the Ralph M. Brown Act, Cal. Gov. Code § 54950, *et seq.*, as may be amended from time to time or as may be modified or suspended by Executive Order.

Section 3. 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 December 16, 2021.

Joe Mosca, Chair
San Diego Community Power

Megan Wiegelman, Interim Secretary
San Diego Community Power



SAN DIEGO COMMUNITY POWER Staff Report – Item 3

To: San Diego Community Power Board of Directors

From: Eric W. Washington, Chief Financial Officer

Via: Bill Carnahan, Interim Chief Executive Officer

Subject: Treasurer's Report for Period Ending 10/31/21

Date: December 16, 2021

RECOMMENDATION

Receive and File Report

BACKGROUND

San Diego Community Power (SDCP) maintains its accounting records on a full accrual basis in accordance with Generally Accepted Accounting Principles (GAAP) as applicable to governmental enterprise funds.

SDCP has prepared year-to-date financial statements for the period ended September 30, 2021, along with budgetary comparisons.

ANALYSIS AND DISCUSSION

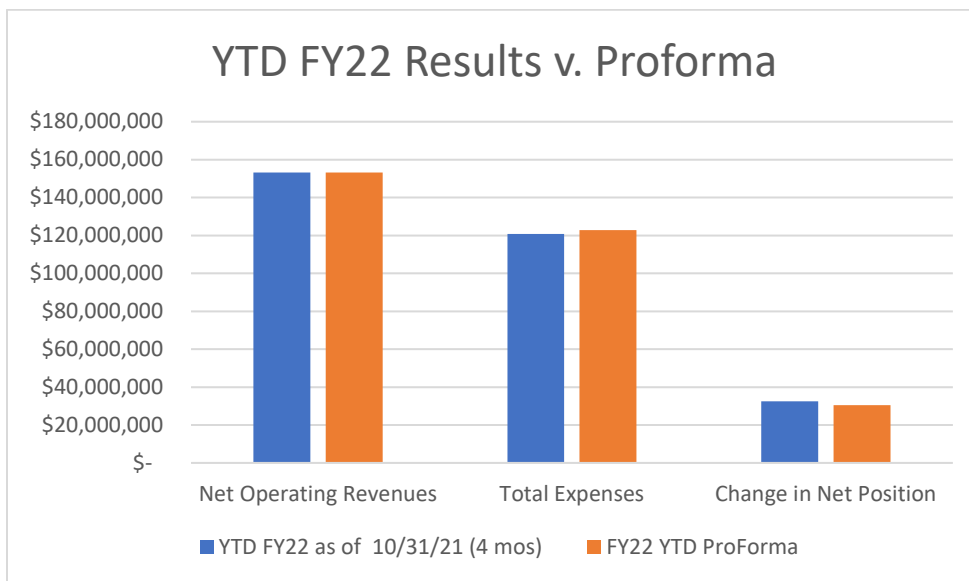
Financial results for the period ended 10/31/21: \$153.27 million in net operating revenues were reported compared to \$136.43 million budgeted for the period. \$120.79 million in total expenses were reported (including \$112.52 million in energy cost) compared to \$91.91 million budgeted for the period. After expenses, SDGP's change in net position of \$23.93 million was reported. The following is a summary to actual results compared to the Fiscal Year 2022 Budget.

		Budget Comparison		
	YTD FY22 as of 10/31/21 (4 mos)	FY22 YTD Budget	Budget Variance (\$)	Budget (%)
Net Operating Revenues	\$ 153,273,771	\$ 136,428,669	\$ 16,845,102	112
Total Expenses	\$ 120,791,066	\$ 115,710,844	\$ 5,080,222	104
Change in Net Position	\$ 32,482,705	\$ 20,717,825	\$ 11,764,880	

- Net operating revenues finished 12% ahead of budget
- Operating expenses came in over budget by 4%

Financial results for period were in line with projections presented in the year-to-date proforma. SDCP's change in net position was 6.4% over the projection. The following is a summary to actual results compared to the fiscal year-to-date proforma.

		Proforma Comparison		
	YTD FY22 as of 10/31/21 (4 mos)	FY22 YTD ProForma	ProForma Variance (\$)	Proforma (%)
Net Operating Revenues	\$ 153,273,771	\$ 153,199,863	\$ 73,908	0.05%
Total Expenses	\$ 120,791,066	\$ 122,769,302	\$ (1,978,236)	-1.61%
Change in Net Position	\$ 32,482,705	\$ 30,430,561	\$ 2,052,144	6.74%



COMMITTEE REVIEW

The report was not reviewed by the Financial Risk Management Committee (FRMC)

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: 2022 Year-to-Date Period Ended 10/31/21 Financial Statements



ACCOUNTANTS' COMPILATION REPORT

Management
San Diego Community Power

Management is responsible for the accompanying financial statements of San Diego Community Power (a California Joint Powers Authority) which comprise the statement of net position as of October 31, 2021, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
November 23, 2021

SAN DIEGO COMMUNITY POWER
STATEMENT OF NET POSITION
As of October 31, 2021

ASSETS

Current assets	
Cash and cash equivalents	\$ 29,352,734
Accounts receivable, net	33,846,140
Accrued revenue	21,904,413
Prepaid expenses	70,169
Other receivables	11,733
Deposits	3,822,108
Total current assets	<u>89,007,297</u>
Noncurrent assets	
Restricted cash	9,000,000
Deposits	2,250,000
Total noncurrent assets	<u>11,250,000</u>
Total assets	<u>100,257,297</u>

LIABILITIES

Current liabilities	
Accrued cost of energy	52,219,461
Accounts payable	335,606
Other accrued liabilities	171,384
Due to other governments	92,832
Security deposits	570,000
Interest payable	76,123
Bank note payable	22,840,082
Total current liabilities	<u>76,305,488</u>
Noncurrent liabilities	
Other noncurrent liabilities	517,741
Loans payable	5,000,000
Total noncurrent liabilities	<u>5,517,741</u>
Total liabilities	<u>81,823,229</u>

NET POSITION

Unrestricted	18,434,068
Total net position	<u><u>\$ 18,434,068</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
Four Months Ended October 31, 2021

OPERATING REVENUES

Electricity sales, net	\$ 153,273,771
------------------------	----------------

OPERATING EXPENSES

Cost of energy	118,506,029
Contract services	839,516
Staff compensation	958,451
General and administration	288,961
Total operating expenses	120,592,957
Operating income (loss)	32,680,814

NONOPERATING EXPENSES

Interest and financing expense	198,109
Nonoperating expenses	198,109

CHANGE IN NET POSITION

	32,482,705
Net position at beginning of period	(14,048,637)
Net position at end of period	\$ 18,434,068

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS
Four Months Ended October 31, 2021

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 111,234,496
Other operating receipts	5,107,487
Payments to suppliers for electricity	(83,507,236)
Payments for goods and services	(1,170,226)
Payments to employees for services	(931,499)
Payments for deposits and collateral	(2,622,108)
Tax and surcharge payments to other governments	(293,296)
Net cash provided (used) by operating activities	<u>27,817,618</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Interest and related expense payments	<u>(185,450)</u>
Net cash provided (used) by non-capital financing activities	<u>(185,450)</u>

Net change in cash and cash equivalents	27,632,168
Cash and cash equivalents at beginning of period	<u>10,720,566</u>
Cash and cash equivalents at end of period	<u><u>\$ 38,352,734</u></u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	29,352,734
Restricted cash	<u>9,000,000</u>
Cash and cash equivalents	<u><u>\$ 38,352,734</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS (continued)
Four Months Ended October 31, 2021

**RECONCILIATION OF OPERATING INCOME TO NET
CASH PROVIDED (USED) BY OPERATING ACTIVITIES**

Operating income	\$ 32,680,814
Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities	
Revenue adjusted for allowance for uncollectible accounts	1,548,220
(Increase) decrease in:	
Accounts receivable	(34,278,239)
Accrued revenue	(9,684,104)
Other receivables	4,031,539
Prepaid expenses	(70,169)
Deposits	(2,172,108)
Increase (decrease) in:	
Accrued cost of electricity	36,074,741
Accounts payable	(26,677)
Other accrued liabilities	82,050
User taxes due to other governments	81,551
Supplier security deposits	(450,000)
Net cash provided (used) by operating activities	<u><u>\$ 27,817,618</u></u>



SAN DIEGO COMMUNITY POWER Staff Report – Item 4

To: San Diego Community Power Board of Directors

From: Rita De la Fuente, Director of External Affairs
Sebastian Sarria, Program and Policy Manager

Via: Cody Hooven, Chief Operating Officer

Subject: Amend Community Advisory Committee (CAC) Membership Terms and Criteria, Membership Application, and Receive Update on Application Timeline and Appointment

Date: December 16, 2021

RECOMMENDATION

1. Approve the Community Advisory Committee (CAC)'s recommendation to the Board to amend the CAC membership terms and criteria by expanding the number of members to 14, with two primary representatives per member agency. If SDCP adds another member agency, the makeup of the CAC will change to one primary and one alternate per member agency to ensure sustainable growth of the committee.
2. Approve the amended CAC membership application, in substantive form, for new members from the County of San Diego and National City.
3. Receive and provide feedback on CAC membership application timeline and appointment.

BACKGROUND

At the January 30, 2020, meeting of the Board of Directors, the Membership Terms and Criteria were first established. When addressing a potential growth in CAC membership, section one states that *"[t]his composition may be revisited by the Board if new member [agencies] are added to SDCP."*

Since then, the Board of Directors have approved membership by County of San Diego and the City of National City into San Diego Community Power. Under the approved Membership Criteria and Terms, however, the Committee has a limit of ten (10) members. Therefore, a revision is needed to accommodate the new member agencies.

ANALYSIS AND DISCUSSION

In preparing for a potential expansion of the CAC, staff reviewed the number of Community Advisory Committee members of two other CCAs in the state. Staff looked at

the total number of member agencies within those CCAs as well the total number of CAC members. Below is a description of staff's findings:

- Clean Power Alliance (CPA): They have 31 member agencies but have limited their CAC to 15 members. Rather than representing each agency, the CAC members represent 7 sub-regions of their service territory.
- East Bay Community Energy (EBCE): They have 15 member agencies but have limited their CAC to 10 members. Like CPA, EBCE's CAC members represent five distinct regions.

In reviewing this information, staff sought SDCP's own Community Advisory Committee for their recommendation in this matter. For example, SDCP staff heard feedback from individual CAC members that pursuing the regional approach was not preferable because it could overshadow smaller municipalities near bigger ones. The CAC also expressed interest in maintaining an adequate membership size that accommodates the new member agencies but also ensuring that the committee maintains productive dialogue with the various members. Given the limit of 15 found in CPA's CAC, staff feels comfortable growing to a membership base of 14 for logistical and operational purposes. The CAC's review is found in the Committee Review section below.

CAC Membership Application Form

Staff has also revised the membership application form to accommodate the County of San Diego and National City, found as Attachment B to this staff report. The form will be available digitally using Microsoft Forms to the public. It should be noted that a Microsoft account is not needed to access the form. The draft form outlines the applicant criteria, which states the following:

1. Applicants must be residents (property owners and/or renters), business owners, employees, or representatives of a community-based organization within one of the two new member agencies of San Diego Community Power: The unincorporated areas of San Diego County and the City of National City.
2. Applicants must be committed to serving on the CAC and regularly attending CAC meetings and occasional SDCP Board meetings. CAC meetings, times, and location will be determined in collaboration with staff. Members will serve staggered 3-year terms and there is a limit of 2 terms.

It also asks the applicant for demographic information and if they are applying under a specific stakeholder category. Moreover, the form outlines that appointed members are to abide by the Political Reform Act and Form 1090, where they will refrain from voting on issues in which they have a financial interest in.

CAC Membership Selection and Proposed Timeline

Staff anticipates releasing the application to the public on Monday, December 20 at 5 pm Pacific Standard Time (PST). This will be done via email to our contact list, social media,



and stakeholder partners. Staff will also work with County and National City staff so they may promote the application on their own communication channels.

Staff further plans to close applications on Wednesday, January 19, 2022, at 5 pm. Once applications are received, staff will organize the submissions and send them to County of San Diego and National City staff for their review and determination. SDCP staff will then work with the respective Directors to bring their nominees for appointment by the full Board at the February 24, 2022, regular meeting. Given the committee's staggered term structure, seats 11 and 13, as noted in Attachment C, will start off with a term end date of 2025. Members who occupy seats 12 and 14 will be eligible to seek up to two full 3-year terms in addition to the one year they will serve from 2022 to 2023.

The new CAC members would then be expected to be seated at the March 2022 meeting of the full Community Advisory Committee. This timeline is subject to change but is described to show the expected timeline to onboard the new CAC members from the County of San Diego and National City.

COMMITTEE REVIEW

At the November 12 regular meeting of the SDCP Community Advisory Committee, staff presented two options on expanded CAC membership for recommendation to the Board for their approval. Option one would be to maintain the original membership structure of two primary members per member agency that would result in growing the committee to 14 members. However, if a new member agency is approved by the Board into SDCP, then the CAC would move to one primary and one alternate member.

Option two would be to move to one primary and one alternate member starting on July 1, 2022. The timing would coincide with the first set of terms that would end on June 31, 2022. Moreover, to accommodate the new CAC members from the County and National City, the committee would grow to 14 members as soon as the new members are seated but acknowledge the change in structure starting on July 1, 2022.

The CAC unanimously voted to recommend that the Board adopt option one and grow the membership base to a total of fourteen with the understanding that if another member agency is approved by the Board, then the representation would move to one primary and one alternate.

FISCAL IMPACT

Costs associated with this action include staff time to manage the meetings, use of possible materials, virtual meeting platforms, and if save to do so, physical meeting spaces.

ATTACHMENTS

Attachment A: Draft Amended CAC Membership Terms and Criteria
Attachment B: Draft Amended CAC Membership Application Form
Attachment C: CAC Committee Roster and Terms





Community Advisory Committee Membership Terms and Criteria

1. The Committee shall be made up of fourteen (14) primary committee members, with two (2) from each member agency. If another member agency is added beyond a total of seven, the CAC will move to one primary and one alternate member for a total of seven (7) primary committee members. This composition may be revisited by the Board if new member agencies are added to SDCP.
2. The CAC is a Brown Act Committee and all meetings shall be posted and held in public settings;
3. SDCP aims to ensure a wide variety of perspectives and participation on the Community Advisory Committee;
4. Members shall be residents (property owners and/or renters), business owners, employees or representatives of a community-based organization located within one of the member agencies of San Diego Community Power;
5. When reviewing applicants for membership, SDCP staff and the Board of Directors are to prioritize residents, when feasible, from diverse social, economic and racial backgrounds that are representative of all residents within the service territory of San Diego Community Power;
6. There shall be at least one CAC member that is a renter within SDCP's service territory and one that is a business owner.
7. Applicants must be committed to serving on the CAC and attending regular committee meetings, and occasional SDCP Board meetings. CAC meetings, times, and location will be determined in collaboration with staff. Members will serve a limit of two, three-year staggered terms.
 - a. Seat 1 – current term ends 2022 and will renew to 2025 on July 1, 2022.
 - b. Seat 2 – current term ends 2023 and will renew to 2026 on July 1, 2023.



Community Advisory Committee Membership Application

Recruitment for Members to Represent Unincorporated San Diego County and National City

San Diego Community Power (SDCP) is now taking applications for expand membership in its Community Advisory Committee (CAC) after the addition of San Diego County and the City of National City. Complete applications along with a resume are by 5 pm on January 19th, 2022.

According to Section 5.10.3 of the SDCP Joint Powers Authority (JPA) Agreement:

“each Party may nominate a committee member(s) and the Board shall determine the final section of committee members, who should represent a diverse cross-section of interests, skills sets and geographic regions.”

Currently, the CAC is made up of 10 members with two representatives from each member agency. With the addition of the County and National City, the CAC will grow to 14 members. Therefore, two new members will be appointed by the Directors representing the two new agencies, for a total of four. Nominees will then be presented to the full Board at the February 24th meeting for final appointment.

SDCP will work to ensure that the nominees represent the diverse populations of its member agencies, accounting for different economic, racial, and social backgrounds.

The Scope of Work for the CAC members includes, but is not limited to, the following:

1. To provide a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of SDCP;
2. Elect CAC officers and define priorities and duties within its Scope to ensure the Committee can operate independently and collaboratively, with limited support from SDCP staff;
3. Adopt a work plan at the start of every fiscal year that aligns with the CAC Scope provided by the Board;
4. Work on defined objectives as approved by the Board, to produce materials or advice that will assist the Board in decision-making;
5. Help the Board to identify issues of concern and opportunities to educate community members about SDCP;
6. Draft reports to the SDCP Board of Directors with findings and recommendations as may be needed;
7. Represent the views of Committee's constituencies in comments and recommendations;
8. Incorporate language around inclusion and diversity in discussions as they relate to SDCP operations;
9. Plan for and engage in community events and special projects as appropriate; and
10. Serve as an information-channel back to their communities.

Applicant Criteria:

1. Applicants must be residents (property owners and/or renters), business owners, employees or representatives of a community-based organization within one of the two new member agencies of San Diego Community Power: The unincorporated areas of San Diego County and the City of National City.
2. Applicants must be committed to serving on the CAC and regularly attending CAC meetings and occasional SDCP Board meetings. CAC meetings, times, and location will be determined in collaboration with staff. Members will serve staggered 3-year terms and there is a limit of 2 terms.

Name: _____

Address: _____

Organization represented and title (if applicable): _____

Phone / Email: _____

Are you a resident of one of the new members? If yes, which? _____

Please specify whether you are a property owner or renter _____

Are you a business owner in unincorporated San Diego County or National City? If so, which one? _____

<u>I am Applying Under the Following Stakeholder Category (please check top 2)</u>			
<input type="checkbox"/>	Environmental/Clean Energy	<input type="checkbox"/>	Labor Union
<input type="checkbox"/>	Business Owner/Association	<input type="checkbox"/>	Regional/Large Energy User
<input type="checkbox"/>	Academic/Research Center	<input type="checkbox"/>	Cultural Organization
<input type="checkbox"/>	Social Justice	<input type="checkbox"/>	Student in College/University/Trade School
<input type="checkbox"/>	Citizen at large	<input type="checkbox"/>	Other:

Please explain why you wish to be appointed to the San Diego Community Power Community Advisory Committee and briefly describe your qualifications including any applicable experience. Please indicate if you are a representative of an organization with expertise in energy issues generally and/or Community Choice Energy specifically. You may send an optional resume to info@sdcommunitypower.org.

As a member of the SDCP Community Advisory Committee, you are making a time commitment to actively participate in the planning and development of San Diego Community Power (SDCP) as an electricity service provider. Please sign the statement below indicating you have the time to prepare for and attend meetings.

I have sufficient time to devote to this responsibility and will attend scheduled meetings if appointed. I am also aware that this application is a public document. I will also abide by the Political Reform Act and Form 1090, where I will refrain from voting on issues in which I have a financial interest.

Signature

Date



Community Advisory Committee Roster and Seat Assignments

Seat	Term Ends	Name	Member Agency Representing
1	2022	Eddie Price	San Diego
2	2023	Matthew Vasilakis	San Diego
3	2022	Edward Lopez	Chula Vista
4	2023	Carolyn Scofield	Chula Vista
5	2022	Jen Derks	La Mesa
6	2023	David Harris	La Mesa
7	2022	Gary L. Jahns	Encinitas
8	2023	Tara Hammond	Encinitas
9	2022	Anna Webb	Imperial Beach
10	2023	Tom Summers	Imperial Beach
11	2022*		County of San Diego
12	2023*		County of San Diego
13	2022*		National City
14	2023*		National City

*Seats 1, 3, 5, 7, and 9 will update to 2025 on July 1, 2022 once renewal for those seats take place. Seats 11 and 13 will automatically update to 2025 since those members will have just joined earlier in 2022. Terms end on June 31st of every designated year.



SAN DIEGO COMMUNITY POWER Staff Report – Item 5

To: San Diego Community Power Board of Directors

From: Sebastian Sarria, Program and Policy Manager

Via: Cody Hooven, Chief Operating Officer

Subject: Approval of Renewable Energy Self-Generation Bill Credit Transfer (RES-BCT) Tariff

Date: December 16, 2021

RECOMMENDATION

Approve the SDCP RES-BCT tariff.

BACKGROUND

In ensuring customer retention and satisfaction, staff has explored developing a Renewable Energy Self-Generation Bill Credit Transfer (RES-BCT) tariff that mirrors what San Diego Gas & Electric (SDG&E) currently provides to bundled customers. This tariff provides the ability for local government customers to allocate credits earned by eligible generating facilities to be allocated among the local government customer's accounts. Customers that enroll with SDCP would lose the benefit of the SDG&E RES-BCT program. Examples of a local government include a city, county, school district, and local public agency.

The proposed SDCP RES-BCT tariff has been developed to provide local government agencies with the same benefits currently received with SDG&E's RES-BCT tariff.

ANALYSIS AND DISCUSSION

As proposed, SDCP local government customers who have an eligible generation facility can apply for the SDCP RES-BCT tariff to allocate monetary credits earned by the generation facility among other electric service accounts. The intent is to save on installation costs from having solar on every rooftop and instead allow the account holder to spread the savings of having excess bill credits from the generating facility.

The credits are earned based on the applicable rate in effect at the time the electricity is generated by the facility and placed on the grid. The customer must submit an application that identifies the account number of the generation facility (Generating Account) and the account numbers, and percentage of credit to be allocated, of the Benefiting Accounts. Credits allocated may be used to offset SDCP generation charges, which will be applied

monthly. The arrangement is effective for 12-months, also known as the Relevant Period. Staff will ensure that customers currently enrolled in SDG&E's equivalent are properly notified before their Phase 3 enrollment begins next year.

The same account may not participate in SDCP's Net Energy Metering (NEM) program, Feed-In Tariff program or in combination with SDG&E's Level Pay Plan option. There is also no guarantee that SDCP RES-BCT customers who choose to opt-out and return to SDG&E would do so under the bundled RES-BCT service.

COMMITTEE REVIEW

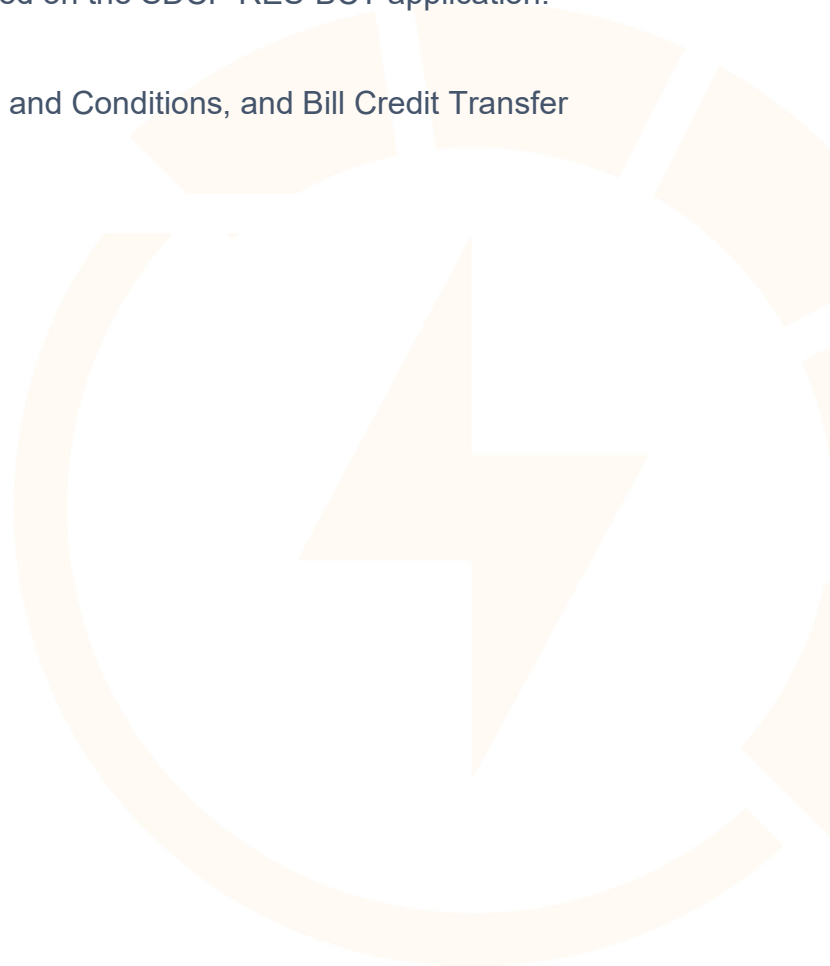
At its October 19, 2021 regular meeting, the Finance and Risk Management committee reviewed and recommended approval of the RES-BCT tariff to the Board.

FISCAL IMPACT

Credits are earned by the Generating Account based on SDCP's rates in effect at the time the energy is generated and placed on the grid. The credits are allocated to offset charges incurred on the customer's Benefiting Accounts, within SDCP's service territory, based on the allocated percentages identified on the SDCP RES-BCT application.

ATTACHMENTS

Attachment A: Draft RES-BCT Tariff Terms and Conditions, and Bill Credit Transfer Request Form.





Renewable Energy Self-Generation Bill Credit Transfer Tariff

Terms and Conditions of Service

A. PURPOSE

The purpose of the San Diego Community Power ("SDCP") Renewable Energy Self-Generation Bill Credit Transfer Tariff (RES-BCT) Terms and Conditions is to provide a framework that allows Local Governments or Campuses to generate energy from an Eligible Renewable Generating Facility for its own use (Generating Account) and to export energy not consumed at the time of generation by the Generating Account to the grid. All generation exported to the grid is converted into Generation Credits and applied to the Benefiting Accounts designated by the Local Government or Campus.

B. APPLICABILITY

The SDCP-RESBCT tariff is available to Local Government SDCP customers with an Eligible Renewable Electrical Generating Facility (defined in Section D Definitions) within SDCP service territory. Eligible customers who take service under the SDCP RES-BCT tariff shall not be eligible for any other program that requires an electrical corporation to purchase generation from the customer's Eligible Renewable Electrical Generation Facility enrolled in this tariff.

C. TERRITORY

SDCP service area.

D. DEFINITIONS

ELIGIBLE RENEWABLE ELECTRICAL GENERATION FACILITY: A facility that generates electricity from a renewable source listed in Public Resources Code Section 25741(a)(1). These sources are biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation (only if facility will not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow), digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

The Eligible Renewable Electrical Generation Facility must also meet all of the following criteria:

- a. is a generation facility with a generation capacity of not more than five megawatts;
- b. is located within the geographical boundaries of SDCP's service territory;
- c. is owned, operated or located on property under the control of the Local Government customer. Under certain circumstances when a Local Government customer is a lessee in a lease agreement, leased property within the geographical boundaries of the local government customer shall be considered under the control of the Local Government customer;
- d. is sized to offset all or a part of the electrical load of the Generating Account; and
- e. is interconnected and operates in parallel with SDG&E's transmission and distribution systems.



Eligible generators utilized to receive service under the terms of this rate schedule shall be in compliance with SDG&E's Electric Rule 21 (Interconnection Standards for Non-Utility Owned Generation). The Local Government customer shall have installed a meter capable of recording net generation output in 15-minute intervals to interconnect with the generator, and which must be approved by SDG&E. The Local Government must execute and comply with the applicable SDG&E Interconnection Agreement, SDG&E tariffs, and any other regulations and laws governing the interconnection of the Eligible Renewable Electrical Generating Facility.

Eligible generators participating on this schedule are not eligible for service under SDCP's Net Energy Metering (NEM) program or to participate in SDCP's Feed-In Tariff program. Moreover, service under this tariff will not be provided in combination with SDG&E's Level Pay Plan option. Lastly, there is no guarantee that an SDCP RES-BCT customer who chooses to opt-out and return to SDG&E will be guaranteed service under the bundled RES-BCT tariff.

LOCAL GOVERNMENT: *Consistent with Public Utilities Code Section 2830, Local Government means a customer formed as a city, county, (whether general law or chartered, city and county), special district, school district, political subdivision, other local public agency or a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Government Code Section 6500 et seq.) that has as members public agencies located within the same county and same electrical corporation service territory, but shall not mean the State of California or any agency or department of the State, other than an individual campus of the University of California or the California State University or any joint powers authority that has as members public agencies located in different counties or different electrical corporation service territories, or that has as a member the federal government, any federal department or agency, this or another state, or any department or agency of this state or another state.*

GENERATING ACCOUNT: A Generating Account is the SDG&E electricity billing account at the location of the Eligible Renewable Electrical Generation Facility served under a time-of-use (TOU) rate schedule with bills rendered in the name of the Local Government customer. Generating Accounts will be allowed to take service under Schedule DG-R (Distributed Generation Renewable – Time Metered).

BENEFITING ACCOUNT: A Benefiting Account is a service account, or more than one service account belonging to a Local Government customer, located within SDCP's service territory and served under a time-of-use (TOU) rate schedule within the geographical boundary of the city, county, or city and county in which the campus is located or an account or accounts that belong to members of a joint powers authority and are located within the geographical boundaries of the group of public agencies that formed the joint powers authority. The number of Benefiting Accounts is limited to 50. Benefiting Accounts will not automatically be eligible to receive service under Schedule DG-R, unless the Benefiting Account is already a host facility to a distributed generation project. Benefiting accounts participating on SDCP's RES-BCT tariff are not eligible for service under SDCP's NEM program.

POWER DELIVERED: The Power Delivered is the metered output measured in kilowatt-hours, exported to the grid, as recorded by the net generator output meter and validated by the SDG&E billing processes during the specific billing period.

E. PROGRAM

In order to initiate service under this tariff, the Local Government customer must submit a SDCP RES-BCT Allocation Request Form (Exhibit A - Request Form). The Request Form designates how the credits from the Generating Account will be allocated among the customer's Benefiting Accounts. The customer may submit an updated form within a Relevant Period in the event there is a change in eligibility of a Benefiting Account (such as account closure), and which must be received by SDCP at least thirty (30) days prior to when the reallocation of Generating Account credits is to be effective. A Local Government customer requesting termination of SDCP RES-BCT service shall provide written notice to SDCP at least thirty (30) days in advance of the termination date.

Only the energy charge rate component of the Generating Account's SDCP service charge shall be used in the calculation of credits to be applied under this tariff. Credits will be calculated by multiplying the Power Delivered by TOU energy charge component of the Generating Account's electric energy commodity rate schedule, as determined by the discrete TOU period during which the Power Delivered was produced and exported to the grid. Credits will be applied to Benefiting Accounts based on the Request Form. SDCP will not compensate a Local Government for electricity generated from an Eligible Renewable Electrical Generating Facility in excess of the bill credits applied to the designated Benefiting Account.

A Benefiting Account Relevant Period is a twelve-month period, or portion thereof, corresponding to that of the Generating Account Relevant Period. However, due to possible differences in billing (and meter read) cycles, the Benefiting Account Relevant Period may lag in time behind the Generating Account Relevant Period by any number of days up to one full billing cycle.

For purposes of applying Bill Credit, the Bill Credit Relevant Period ends at the same time as the Benefiting Account Relevant Period (noted in the Request Form) that is lagging the *most* behind the Generating Account Relevant Period, up to one Billing Cycle.

For a new Benefiting Account Credit arrangement, the initial Benefiting Account Relevant Period for a Benefiting Account that does not have the same Billing Cycle as the Generating Account, will start its Relevant Period at the start of its first full billing cycle that falls *after* that of the Generating Account. During the less-than-one-full billing-cycle period between the start of the Generating Account's Relevant Period and that of the Benefiting Account, no bill credit will be applied to that Benefiting Account's usage. The Benefiting Account's normal Relevant Period will consist of a twelve-month period, starting with the first full bill cycle.

Credits will be applied to the Generating Account and the Benefiting Account(s) based on whole percentages provided by the Local Government on the Request Form. The process of allocating credits shall commence on the effective date of the Request Form and shall continue for 12 consecutive billing periods (Relevant Period). Credits remaining at the end of the Relevant Period will be applied toward remaining eligible SDCP electric generation charges during the Relevant Period. At the end of the Relevant Period, any remaining credit shall be reset to zero. Each subsequent 12-month period of service under this schedule shall be considered a new Relevant Period. The Local Government will not be compensated for electricity generated from an Eligible Renewable Electrical Generating Facility in excess of the bill credits applied to the Benefiting Accounts.



The Local Government is responsible for all charges due on the Benefiting Account bill in excess of the Generating Account applied credits.

F. Billing Process:

- 1) **Benefiting Account Bill:** A Benefiting Account served under this tariff is responsible for all charges billed under its OAS including monthly billed minimum charges, customer charges, meter charges, facilities charges, and energy and demand charges. Applicable demand charges are defined in the OAS. Credits applied based on the whole percentages provided by the Local Government on the Request Form shall not exceed the electric energy commodity charges incurred during the specific billing period.
- 2) **Generating Account Bill:** A Generating Account served under this schedule is responsible for all charges billed under its OAS including monthly billed minimum charges, customer charges, meter charges, facilities charges, energy and demand charges. Applicable demand charges are defined in the OAS. Credits are applied on a monthly basis to a Generating Account whereby they will be based on the on whole percentages provided by the Local Government on the Request Form to the Benefiting Account(s) and shall not exceed the electric energy commodity charges incurred during the specific billing period.



EXHIBIT A
SAN DIEGO COMMUNITY POWER
RENEWABLE ENERGY SELF-GENERATION BILL CREDIT TRANSFER REQUEST FORM

DATE: Click or tap to enter a date

LOCAL GOVERNMENT CUSTOMER NAME: Click or tap here to enter name

MAILING ADDRESS: Click or tap here to enter mailing address

CONTACT NAME: Click or tap here to enter contact name

CONTACT PHONE NUMBER: Click or tap here to enter contact phone number

CONTACT EMAIL ADDRESS: Click or tap here to enter contact email address

REQUESTED EFFECTIVE DATE: Click or tap to enter requested effective date

Note: Request form must be received by SDCP at least 30 days prior to when the reallocation of generating Account credits is to be effective.

☐ Check here if this is an initial request

☐ Check here if this is an update to an existing SDCP RES-BCT Request Form

During the 12-month Relevant Period, updates to an existing SDCP RES-BCT Request Form will only be considered in the event of a change in eligibility of a Benefiting Account, such as account closure. Changes to allocation in subsequent 12-month Relevant Periods must be received at least 30 days prior to the start of the next Relevant Period.

Signature

Date

Generating Account Information.

Credits available as determined by the rates and terms of the SDCP RES-BCT tariff are to be allocated in the following whole percentages to the following authorized Benefiting Accounts(located within SDCP service territory boundaries).

ACCOUNT NUMBER	ACCOUNT NAME	SERVICE ADDRESS	SERVICE DELIVERY POINT	PERCENTAGE

Benefiting Account Information.

Credits available from the Generating Account, as determined by the rates and terms of the SDCP RES-BCT tariff, are to be allocated to the Benefiting Accounts within SDCP territory, in the following whole percentages. Percentages may not sum to more than 100%.

ACCOUNT NUMBER	ACCOUNT NAME	SERVICE ADDRESS	SERVICE DELIVERY POINT	PERCENTAGE

Additional sheets may be attached as needed for additional Benefiting Account and percentages.

SAN DIEGO COMMUNITY POWER Staff Report – Item 6

To: San Diego Community Power Board of Directors

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

Via: Bill Carnahan, Interim Chief Executive Officer

Subject: Update on Back-Office Metrics and Dashboard

Date: December 16, 2021

RECOMMENDATION

Receive update on various back-office activities.

BACKGROUND


Staff will provide regular updates to the Board of Directors regarding San Diego Community Power's (SDCP) back-office activities centered around tracking opt actions (i.e. opt outs, opt ups and opt downs) as well as customer engagement metrics. The following is a brief overview of items pertaining to back-office operations.

ANALYSIS AND DISCUSSION

A) Phase 3 Enrollment Planning

Staff is happy to report to the Board that our pre-enrollment notice #1 for Imperial Beach and Net Energy Metering (NEM) customers across all member cities whose true up is in February have been sent out to customers as of 11/30/2021, within the 60 days notification statutory requirement.


Non-NEM – Imperial Beach:



San Diego Community Power (SDCP) is a local provider of electricity that will serve your community by bringing you cleaner energy at competitive rates. We put our communities first, helping you take a giant step toward a more sustainable energy future.

We are a locally managed, not-for-profit, public agency that focuses on what families need and want most when it comes to their energy.

How It Works



SDCP	SDG&E	YOU GET
Buys electricity from renewable resources	Delivers power and maintains the grid	Cleaner power, local control, and competitive rates

Beginning in February 2022, San Diego Community Power will become your new electric generation service provider – meaning we will purchase renewable power, like solar and wind, and provide it to you at competitive rates. When you are automatically enrolled into our service, you'll receive our standard service offering, **PowerOn**, which provides 50% renewable energy and is priced competitively to what you are currently paying with San Diego Gas & Electric (SDG&E). You can always choose to return to SDG&E service, but you'll be missing out on some important benefits. With SDCP, you're empowered to choose a cleaner future.

Please note that rooftop solar customers and other customers participating in Net Energy Metering (NEM) will be automatically enrolled at the end of their relevant period (commonly referred to as "true-up"). For more information on enrollment, please see the FAQs on our website at: SDCommunityPower.org.

Benefits that you can expect from San Diego Community Power:

- Cleaner, renewable power at competitive prices
- Energy programs tailored to meet the needs of our communities
- Local control by local representatives who prioritize people and our communities
- Reinvestment of revenues into our community
- Support of local job creation and development of local renewable energy projects

To learn more about SDCP and our benefits, change your service level, or to opt out, visit: www.SDCommunityPower.org or call 1-888-382-0169.

Para obtener más información sobre SDCP y nuestros beneficios, cambiar su nivel de servicio o optar por no participar, visite: www.SDCommunityPower.org o llame al 1-888-382-0169.

Upang matuto nang higit pa tungkol sa SDCP at sa aming mga benepisyo, baguhin ang antas ng iyong serbisyo, o mag-opt out, bisitahin ang: www.SDCommunityPower.org o tumawag sa 1-888-382-0169.

Terms & Conditions of Service

San Diego Community Power electric generation rates are managed with the intention of providing cleaner electricity at competitive rates. Any changes to SDCP rates will be adopted at duly noticed public hearings of the San Diego Community Power Board of Directors. Changes to SDG&E or SDCP rates will impact cost comparisons between SDCP and SDG&E.

All SDG&E and SDCP customers pay a monthly Power Charge Indifference Adjustment (PCIA) and Franchise Fee Surcharge. SDCP has already accounted for these after-market charges in calculating rates. View SDCP rates and SDG&E cost comparisons on our website.

BILLING: You will receive a single monthly bill from SDG&E that includes SDCP's electric generation charges. SDCP's electric generation charge replaces SDG&E's electric generation charge. SDCP's charge is not a duplicate charge or extra fee. SDG&E will continue to charge you for electric delivery services. If you opt-out of SDCP, SDG&E will resume charging you for electric generation.

ENROLLMENT: As the default electricity provider for the cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, and San Diego, you will be automatically enrolled into San Diego Community Power service unless you opt-out at least five business days before your meter read date during the enrollment month. Accounts will be automatically enrolled in SDCP's PowerOn on your regularly scheduled meter read on or after the first day of the enrollment month. You may choose to opt-up to Power100, which provides 100% renewable energy service at a slight premium.

For complete Terms and Conditions of Service, please visit SDCommunityPower.org or call SDCP at 1-888-382-0169.

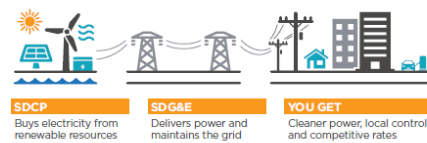
NEM – Member Cities Excluding Encinitas



San Diego Community Power (SDCP) is a local provider of electricity that will serve your community by bringing you cleaner energy at competitive rates. We put our communities first, helping you take a giant step toward a more sustainable energy future.

We are a locally managed, not-for-profit, public agency that focuses on what families need and want most when it comes to their energy.

How it Works



Following the completion of your relevant period (commonly referred to as a "true-up") in **February 2022**, San Diego Community Power will become your new electric generation service provider – meaning we will purchase renewable power, like solar and wind, and provide it to you at competitive rates. When you are automatically enrolled into our service, you'll receive our standard service offering, **PowerOn**, which provides 50% renewable energy and is priced competitively to what you are currently paying with San Diego Gas & Electric (SDG&E). You can always choose to return to SDG&E service, but you'll be missing out on some important benefits. With SDCP, you're empowered to choose a cleaner future.

Note: Only Net Energy Metering (NEM) accounts with a February true-up date will begin enrollment in February 2022. Other NEM accounts will enroll at their true-up date.

Non-NEM residential accounts will begin enrollment starting in February 2022 through May 2022. For more information on enrollment, please see the FAQs on our website at: SDCommunityPower.org.

Benefits that you can expect from San Diego Community Power:

- Cleaner, renewable power at competitive prices
- Energy programs tailored to meet the needs of our communities
- Local control by local representatives who prioritize people and our communities
- Reinvestment of revenues into our community
- Support of local job creation and development of local renewable energy projects

As a customer with onsite generation, you will be automatically enrolled into our Net Energy Metering (NEM) program that functions almost identically to that of SDG&E's but with a few key differences that make our program better!

- Same rate schedules and accrual of credits
- Monthly billing to reduce a large annual true-up bill
- Premium Net Surplus Compensation for customers that generate extra electricity every year
- Automatic checks to customers that have a compensation amount over \$100, up to \$2,500
- Carry over of compensation credits if less than \$100

To learn more about SDCP and our benefits, change your service level, or to opt out, visit: www.SDCommunityPower.org or call 1-888-382-0169.

Para obtener más información sobre SDCP y nuestros beneficios, cambiar su nivel de servicio o optar por no participar, visite: www.SDCommunityPower.org o llame al 1-888-382-0169.

Upang matuto nang higit pa tungkol sa SDCP at sa aming mga benepisyo, baguhin ang antas ng iyong serbisyo, o mag-opt out, bisitahin ang: www.SDCommunityPower.org o tumawag sa 1-888-382-0169.

Terms & Conditions of Service

San Diego Community Power electric generation rates are managed with the intention of providing cleaner electricity at competitive rates. Any changes to SDCP rates will be adopted at duly noticed public hearings of the San Diego Community Power Board of Directors. Changes to SDG&E or SDCP rates will impact cost comparisons between SDCP and SDG&E.

All SDG&E and SDCP customers pay a monthly Power Charge Indifference Adjustment (PCIA) and Franchise Fee Surcharge. SDCP has already accounted for these after-market charges in calculating rates. View SDCP rates and SDG&E cost comparisons on our website.

BILLING: You will receive a single monthly bill from SDG&E that includes SDCP's electric generation charges. SDCP's electric generation charge replaces SDG&E's electric generation charge. SDCP's charge is not a duplicate charge or extra fee. SDG&E will continue to charge you for electric delivery services. If you opt-out of SDCP, SDG&E will resume charging you for electric generation.

ENROLLMENT: As the default electricity provider for the cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, and San Diego, you will be automatically enrolled into San Diego Community Power service unless you opt-out at least five business days before your meter read date during the enrollment month. Accounts will be automatically enrolled in SDCP's PowerOn on your regularly scheduled meter read on or after the first day of the enrollment month. You may choose to opt-up to Power100, which provides 100% renewable energy service at a slight premium.

For complete Terms and Conditions of Service, please visit SDCommunityPower.org or call SDCP at 1-888-382-0169.

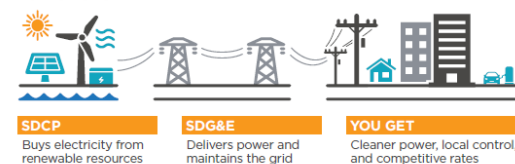
NEM – Encinitas (different due to their Power100 default)



San Diego Community Power (SDCP) is a local provider of electricity that will serve your community by bringing you cleaner energy at competitive rates. We put our communities first, helping you take a giant step toward a more sustainable energy future.

We are a locally managed, not-for-profit, public agency that focuses on what families need and want most when it comes to their energy.

How it Works



Following the completion of your relevant period (commonly referred to as a "true-up") in **February 2022**, San Diego Community Power will become your new electric generation service provider – meaning we will purchase renewable power, like solar and wind, and provide it to you at competitive rates.

In order to reduce Encinitas' carbon footprint from energy consumption, your City Council voted to automatically enroll everyone into **Power100**, providing 100% renewable and carbon free energy for a small premium of up to 3%. **Power100** is one of the most effective tools to help you reduce your carbon footprint. You always have the choice to enroll in our standard service, **PowerOn**, which provides 50% renewable energy. You can also choose to return to San Diego Gas & Electric (SDG&E) service, but you'll be missing out on some important benefits. With SDCP, you're empowered to choose a cleaner future.

Note: Only Net Energy Metering (NEM) accounts with a February true-up date will begin enrollment in February 2022. Other NEM accounts will enroll at their true-up date.

Non-NEM residential accounts in Encinitas will begin enrollment starting in April 2022. For more information on enrollment, please see the FAQs on our website at: SDCommunityPower.org.

Benefits that you can expect from San Diego Community Power:

- Cleaner, renewable power at competitive prices
- Energy programs tailored to meet the needs of our communities
- Local control by local representatives who prioritize people and our communities
- Reinvestment of revenues into our community
- Support of local job creation and development of local renewable energy projects

As a customer with onsite generation, you will be automatically enrolled into our Net Energy Metering (NEM) program that functions almost identically to that of SDG&E's but with a few key differences that make our program better!

- Same rate schedules and accrual of credits
- Monthly billing to reduce a large annual true-up bill
- Premium Net Surplus Compensation for customers that generate extra electricity every year
- Automatic checks to customers that have a compensation amount over \$100, up to \$2,500
- Carry over of compensation credits if less than \$100

To learn more about SDCP and our benefits, change your service level, or to opt out, visit: www.SDCommunityPower.org or call 1-888-382-0169.

Para obtener más información sobre SDCP y nuestros beneficios, cambiar su nivel de servicio o optar por no participar, visite: www.SDCommunityPower.org o llame al 1-888-382-0169.

Upang matuto nang higit pa tungkol sa SDCP at sa aming mga benepisyo, baguhin ang antas ng iyong serbisyo, o mag-opt out, bisitahin ang: www.SDCommunityPower.org o tumawag sa 1-888-382-0169.

Terms & Conditions of Service

San Diego Community Power electric generation rates are managed with the intention of providing cleaner electricity at competitive rates. Any changes to SDCP rates will be adopted at duly noticed public hearings of the San Diego Community Power Board of Directors. Changes to SDG&E or SDCP rates will impact cost comparisons between SDCP and SDG&E.

All SDG&E and SDCP customers pay a monthly Power Charge Indifference Adjustment (PCIA) and Franchise Fee Surcharge. SDCP has already accounted for these after-market charges in calculating rates. View SDCP rates and SDG&E cost comparisons on our website.

BILLING: You will receive a single monthly bill from SDG&E that includes SDCP's electric generation charges. SDCP's electric generation charge replaces SDG&E's electric generation charge. SDCP's charge is not a duplicate charge or extra fee. SDG&E will continue to charge you for electric delivery services. If you opt-out of SDCP, SDG&E will resume charging you for electric generation.

ENROLLMENT: As the default electricity provider for the cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, and San Diego, you will be automatically enrolled into San Diego Community Power service unless you opt out at least five business days before your meter read date during the enrollment month. Customers in Encinitas will be automatically enrolled in SDCP's Power100 on your regularly scheduled meter read on or after the first day of the enrollment month. You may choose to opt-down to PowerOn, which provides 50% renewable energy service at a competitive rate.

For complete Terms and Conditions of Service, please visit SDCommunityPower.org or call SDCP at 1-888-382-0169.

B) Participation Tracking

SDCP Staff and Calpine have worked together to create a reporting summary of customer actions to opt-out, opt-up to Power100 or opt down from Power100 to PowerOn. The below charts summarize these actions accordingly as of December 08th, 2021:

I. Opt Outs

Opt Outs by TOT	February	March	April	May	June	July	August	September	October	November	December - MTD	2021 YTD Grand Total
CITY OF CHULA VISTA	2	77	1	150	9	3	11	12	1	0	0	266
CITY OF ENCINITAS	0	0	3	32	7	11	5	3	1	1	0	63
CITY OF IMPERIAL BEACH	0	0	0	11	0	1	1	0	0	0	6	19
CITY OF LA MESA	0	0	15	51	3	6	3	0	6	0	0	84
CITY OF SAN DIEGO	14	10	43	516	51	123	111	131	34	23	8	1064
Grand Total	16	87	62	760	70	144	131	146	42	24	14	1496

Opt Outs by Class Code	February	March	April	May	June	July	August	September	October	November	December - MTD	2021 YTD Grand Total
Residential	0	0	0	0	0	0	0	0	0	0	10	10
Commercial/Industrial	16	87	62	760	70	144	131	146	42	24	4	1486
Grand Total	16	87	62	760	70	144	131	146	42	24	14	1496

Opt Outs by Reason	February	March	April	May	June	July	August	September	October	November	December - MTD	2021 YTD Grand Total
Concerns about Government-Run Power Agency	0	0	2	15	2	2	2	0	0	0		23
Decline to Provide	0	4	19	11	25	33	31	94	1	1	4	223
Dislike being automatically enrolled	0	0	28	59	23	18	34	16	3	4	5	190
Have renewable Energy Reliability Concerns	0	0	0	3	0	2	7	0	0	0		12
Other	1	83	2	667	12	18	3	7	8	3		804
Rate or Cost Concerns	15	0	11	5	8	70	50	29	29	16	4	237
Service or Billing Concerns	0	0	0	0	0	1	4	0	1	0		6
Existing relationship with the utility	0	0	0	0	0	0	0	0	0	0	1	1
Grand Total	16	87	62	760	70	144	131	146	42	24	14	1496

Opt Outs by Method	February	March	April	May	June	July	August	September	October	November	December - MTD	2021 YTD Grand Total
Customer Service Rep (CSR)	0	83	31	681	23	67	73	84	23	17	7	1089
Interactive Voice Response (IVR)	0	0	1	8	5	27	22	9	16	4	1	93
Web	16	4	30	71	42	50	36	53	3	3	6	314
Grand Total	16	87	62	760	70	144	131	146	42	24	14	1496

II. Opt Ups to Power100

Opt Ups by TOT	February	March	April	May	June	July	August	September	October	November	December - MTD	2021 YTD Grand Total
CITY OF CHULA VISTA	0	56	0	0	626	9	4	1	4	1	0	701
CITY OF ENCINITAS	0	18	0	0	0	0	0	0	0	0	0	18
CITY OF IMPERIAL BEACH	0	0	0	0	0	60	0	0	0	0	0	60
CITY OF LA MESA	0	0	12	0	130	3	0	3	0	0	0	148
CITY OF SAN DIEGO	0	133	1	2	2922	12	22	11	48	2	1	3154
Grand Total	0	207	13	2	3678	84	26	15	52	3	1	4081

Opt Ups by Class Code	February	March	April	May	June	July	August	September	October	November	December - MTD	2021 YTD Grand Total
Residential	0	2	0	0	0	0	0	0	0	0	1	3
Commercial/Industrial	0	205	13	2	3678	84	26	15	52	3	0	4078
Grand Total	0	207	13	2	3678	84	26	15	52	3	1	4081

Opt Ups by Method	February	March	April	May	June	July	August	September	October	November	December - MTD	2021 YTD Grand Total
Customer Service Rep (CSR)	0	207	11	1	3668	80	23	13	48	3	0	4054
Interactive Voice Response (IVR)	0	0	0	0	3	0	0	0	0	0	0	3
Web	0	0	2	1	7	4	3	2	4	0	1	24
Grand Total	0	207	13	2	3678	84	26	15	52	3	1	4081

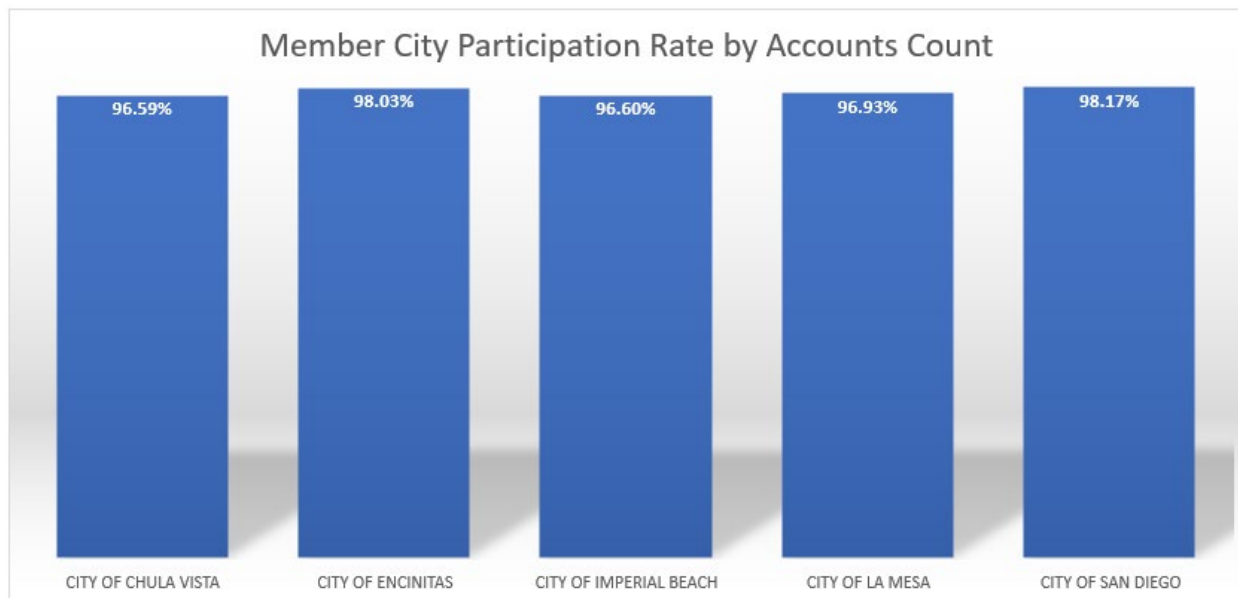
III. Opt Downs from Power100 (Encinitas)

Opt Downs by City	February	March	April	May	June	July	August	September	October	November - MTD	December - MTD	2021 YTD Grand Total
CITY OF CHULA VISTA	0	0	0	0	0	0	0	0	0	0	0	0
CITY OF ENCINITAS	0	0	0	0	24	8	1	1	1	0	0	35
CITY OF IMPERIAL BEACH	0	0	0	0	0	0	0	0	0	0	0	0
CITY OF LA MESA	0	0	0	0	0	0	0	0	0	0	0	0
CITY OF SAN DIEGO	0	0	0	0	0	0	0	0	0	0	0	0
Grand Total	0	0	0	0	24	8	1	1	1	0	0	35

Opt Downs by Class Code	February	March	April	May	June	July	August	September	October	November - MTD	December - MTD	2021 YTD Grand Total
Residential	0	0	0	0	0	0	0	0	0	0	0	0
Commercial/Industrial	0	0	0	0	24	8	1	1	1	0	0	35
Grand Total	0	0	0	0	24	8	1	1	1	0	0	35

Opt Downs by Method	February	March	April	May	June	July	August	September	October	November - MTD	December - MTD	2021 YTD Grand Total
Customer Service Rep (CSR)	0	0	0	0	22	6	1	1	1	0	0	31
Interactive Voice Response (IVR)	0	0	0	0	2	2	0	0	0	0	0	4
Web	0	0	0	0	0	0	0	0	0	0	0	0
Grand Total	0	0	0	0	24	8	1	1	1	0	0	35

IV. Participation Rate (Phase 1 and 2)



Town or Territory	Active	Eligible	Total Opt Outs	Participation Rate by Accounts Count
CITY OF CHULA VISTA	7440	7805	266	96.59%
CITY OF ENCINITAS	3097	3201	63	98.03%
CITY OF IMPERIAL BEACH	530	559	19	96.60%
CITY OF LA MESA	2580	2735	84	96.93%
CITY OF SAN DIEGO	56233	58086	1064	98.17%
Grand Total	69880	72386	1496	97.93%

C) Contact Center Metrics

We are also tracking customer interactions via our Calpine Contact Center and the chart below summarizes contact made by customers broken down by month through December 8th, 2021:

Interactive Voice Response (IVR) and Service Level Agreement (SLA) Metrics

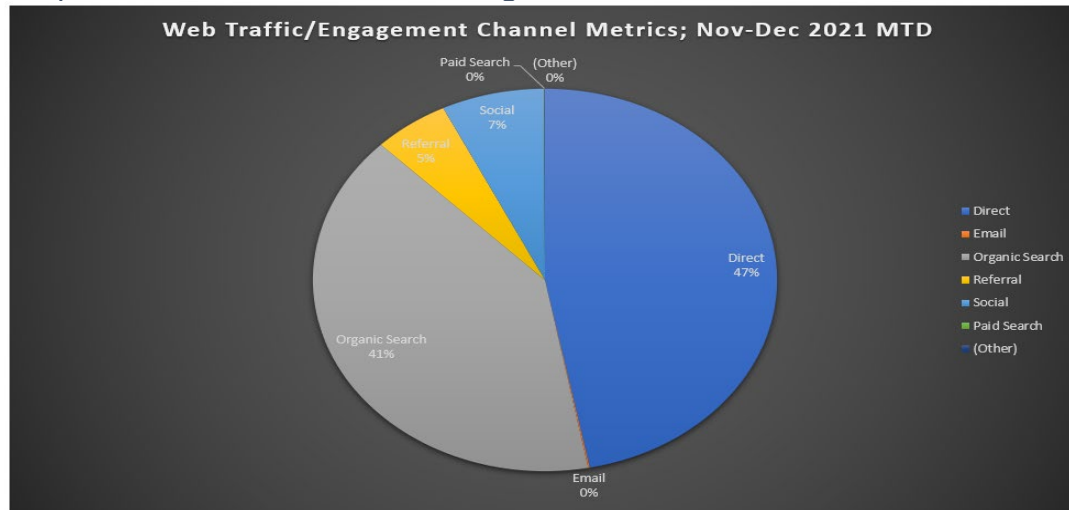
IVR and SLA Details	April	May	June	July	August	September	October	November	December - MTD	2021 YTD Grand Total
Total Calls to IVR	79	109	103	324	531	349	307	244	55	2101
Total Calls Connected to Agents	49	66	57	205	338	231	191	135	29	1301
Average Seconds to Answer	0:00:38	0:00:14	0:00:21	0:00:37	0:00:22	0:00:14	0:00:13	0:00:13	0:00:14	
Average Call Duration	0:08:57	0:07:51	0:06:42	0:10:33	0:08:13	0:08:41	0:08:11	0:08:30	0:08:39	
Calls Answered within 60 Seconds (75% SLA)	91.84%	100.00%	89.83%	89.42%	96.46%	99.57%	98.95%	100.00%	100.00%	
Abandon Rate	0.00%	0.00%	3.39%	1.44%	0.29%	0.00%	0.00%	0.00%	0.00%	

Customer Service Emails			
	Emails Received	Emails answered or escalated within 24 hours	(%)
May	34	29	85.29%
June	43	41	95.35%
July	32	31	96.88%
August	73	71	97.26%
September	34	32	94.12%
October	26	25	96.15%
November	12	12	100.00%
December - MTD	2	2	100.00%
2021 YTD	256	243	94.92%

**Does not include junk email*

D) Web Traffic/Customer Engagement Channel Tracking Metrics

Starting this month, Civilian and the SDCP Team will be tracking traffic associated with our website going forward. We believe this metric is an important one to gauge the frequency with which our customers engage with us. Below is the tracking done so far for the period from November 1st through December 5th :



COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 7

To: San Diego Community Power Board of Directors
From: Lucas Utouh, Director of Data Analytics and Account Services
Via: Bill Carnahan, Interim Chief Executive Officer
Subject: Approval of Remainder of Collections/Delinquency Policy
Date: December 16, 2021

RECOMMENDATION

Approve a Collections and Delinquent Accounts Handling Policy

BACKGROUND

As a best practice for ensuring the long-term ability to predict risk, reduce bad-debts and provide a better experience for customers, it is imperative that load serving entities including CCAs and Utilities reshape their collections and delinquent accounts handling policies to better position themselves well especially in the post COVID19 environment. According to McKinsey & Company (a consulting firm tracking credit and collection processes in the energy sector globally), the reshaping of the collections and delinquent accounts handling is critical in allowing such entities to see other benefits for their customers including improving customer experience, loyalty and brand recognition. In a tight economic and regulatory framework, load serving entities need to work smarter to minimize and mitigate bad debts for their overall long term financial viability, resiliency and competitiveness. The development of the subject policy was based on Staff's review of collections and delinquent accounts' handling policies across community choice aggregation (CCA) programs in California.

Following Staff's recommendation during the October Board meeting to adopt a Collections and Delinquent Accounts Handling Policy, Directors Montgomery-Steppe and Baber proposed amendments to the policy presented. Staff has incorporated the recommended amendments accordingly and has tracked all the changes made to the original policy.

ANALYSIS AND DISCUSSION

Adopting a robust Collections and Delinquent Accounts Handling Policy will allow SDCP to better serve our customers and set clear expectations on the handling of past due customer charges. In alignment with SDG&E's past due date clause, bills for residential electric service are due and payable upon presentation whereby such bills are the first notice to the customer that the amount shown is due and payable. Residential bills will become past due if not paid within 19 days of the date mailed; Non-residential bills will become past due if not paid within 15 days from the date mailed. Staff is proposing that the Board approves a Collections and Delinquent Accounts Handling Policy that is more customer-centric whereby any SDCP customer who has overdue SDCP charges that exceed \$250 shown on their SDG&E bill to receive a late payment notification letter from SDCP after being 60 days past due and a second letter at 90 days past due, informing them of their overdue status and the avenues available to pay the overdue SDCP charges.

COMMITTEE REVIEW

This item was reviewed by the Community Advisory Committee on October 8, 2021. The Committee unanimously supported the staff recommendation.

FISCAL IMPACT

Adopting a Collections and Delinquent Accounts Handling Policy will contribute to SDCP achieving its strategic long-term objectives.

ATTACHMENTS

Attachment A: Collections and Delinquent Accounts Handling Policy with the proposed changes as recommended by Directors Montgomery-Steppe and Baber during the October 2021 Board meeting





San Diego Community Power

Collections and Delinquent Accounts Handling Policy

Effective Date: December 16, 2021

PURPOSE

This policy establishes a delinquent accounts, collections and write off policy that provides the framework for SDCP staff and Back Office Service provider to better serve our customers and set clear expectations on the handling of past due customer charges.

GENERAL CRITERIA

1. Any active SDCP customer who has overdue SDCP charges that exceed \$250 shown on their SDG&E bill will receive a late payment notification letter from SDCP. The letter will be sent after being 60 days past due, with a second letter sent after being 90 days past due, informing the customer of their overdue status and the avenues available to pay the overdue SDCP charges. The customer will be provided 30 days, after the second and final late payment notification letter is sent, to either pay in full or make arrangements to cure the past due balance in installments. 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"). Please see the following exclusion:
 - 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 our collections and delinquent accounts handling protocols.
2. SDCP will select a local collections agency to enforce this policy **for Non-Residential customers.**
3. Any overdue SDCP charges (120 days or more past due) totaling \$20.00 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.
4. Any overdue SDCP charges (120 days or more past due) totaling \$19.99 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.
5. No accrued interest will be charged on any customer account.
6. 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.
7. Under the guidance of SDCP, the collections agency may be authorized to pursue legal action on any customer with an outstanding balance of \$750 or more.
8. After a customer has paid all overdue amounts, all collections activity will terminate for that customer.
9. **Staff will return to the Board with an adjusted policy recommendation for Residential customers after collecting more data in 2022.**



SAN DIEGO COMMUNITY POWER Staff Report – Item 8

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Director of Power Services

Via: Ryan Baron, General Counsel
Bill Carnahan, Interim Chief Executive Officer

Subject: Approval of Amendment to the SDCP Energy Risk Management Policy to Authorize the CEO to Approve and Execute Administrative Amendments to Power Contracts

Date: December 16, 2021

RECOMMENDATION

Approve the Amendment to the SDCP Energy Risk Management Policy (ERMP) to Authorize the CEO to Approve and Execute Administrative Amendments to Power Contracts.

BACKGROUND

On June 25, 2020, the SDCP board approved an Energy Risk Management Policy (ERMP), which outlines SDCP's administration of tasks and responsibilities related to risk management, including identification of necessary roles and responsibilities assigned to those individuals and groups who will be involved in risk management activities. The Board adopted an addendum related to congestion risk management on January 15, 2021. One of the key purposes of the ERMP is to delineate the authority that the Board delegates to staff and committees regarding review, approval, and execution of contracts.

ANALYSIS AND DISCUSSION

As approved and currently effective, the ERMP delegates authority to the CEO to sign contracts up to 3 years in length and \$50,000,000 in notional value. Long-term Power Purchase Agreements (PPAs), which are typically at least ten years in length, require the Board to review, approve and delegate execution authority, typically to the CEO.

From time to time, it may be necessary to negotiate and enter into amendments to modify provisions of long-term PPAs, but neither the ERMP nor the Board approval of the three currently effective long-term PPAs provides authority for the CEO to do so. Significant amendments, such as those that revise price, capacity, volume, or the broader structure of the PPA, should and will be presented to the Board for review and approval, but doing so for all amendments, especially those that are administrative in nature, would neither

be efficient use of Board time nor allow staff to respond more quickly to minor revisions that may benefit from more nimble execution.

Staff therefore recommend that the Board delegate to the CEO authority to approve and execute administrative amendments, such as those that revise operational procedures or contractual deadlines that do not alter the structure of the PPA. The attached draft revision would delegate to the CEO the authority to execute administrative amendments that fall within the otherwise-delegated authority of the CEO and that reduce risk to SDCP and its customers.

COMMITTEE REVIEW

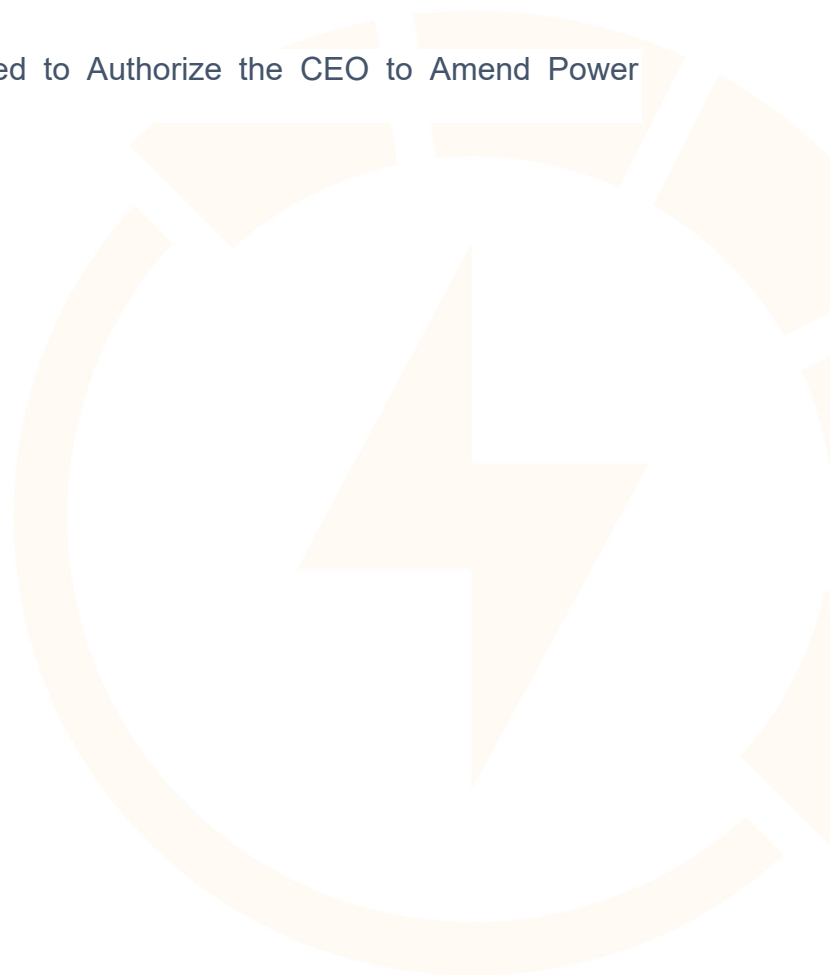
This amendment has not been reviewed by a Committee of the Board.

FISCAL IMPACT

Administrative PPA amendments are unlikely to have significant fiscal impacts. Per the amendment, any changes will be within the authority of the CEO and will reduce the risk to SDCP.

ATTACHMENTS

Attachment A: SDCP ERMP, as Amended to Authorize the CEO to Amend Power Contracts



San Diego Community Power

Energy Risk Management Policy

Version: 2.0
Revision Date: January 15, 2021

Energy Risk Management Policy Table of Contents

1.0	General Provisions	3
1.1	Background and Purpose of Policy	3
1.2	Scope of Business and Related Market Risks	3
1.3	Policy Administration	4
1.4	Policy Distribution and Acknowledgment	4
1.5	Policy Interpretation.....	4
2.0	Risk Management Goals.....	4
3.0	Risk Management Principles	4
3.1	General Risk Management Principles.....	5
3.2	Conflicts of Interest	5
3.3	Adherence to Statutory Requirements	5
3.4	System of Records	6
4.0	Definitions of Market Risks	6
4.1	Market Price Risk.....	6
4.2	Counterparty Credit and Performance Risk	7
4.3	Load and Generation Volumetric Risk.....	7
4.4	Operational Risk	8
4.5	Liquidity Risk.....	8
4.6	Regulatory/Legislative Risk.....	8
5.0	Internal Control Principles	9
6.0	Risk Management Business Practices	10
6.1	Risk Measurement Metrics and Reporting.....	10
6.2	Market Price Risk.....	11
6.3	Counterparty Credit and Performance Risk	12
6.4	Load and Generation Volumetric Risk.....	12
6.5	Operational Risk	12
6.6	Liquidity Risk.....	13
6.7	Regulatory/Legislative Risk.....	13
7.0	Risk Management Policy Governance.....	13
7.1	SDCP Board of Directors	13
7.2	Finance and Risk Management Committee	13
7.3	Risk Oversight Committee (ROC).....	14
Addendum 1 to San Diego Clean Power’s Energy Risk Management Policy: Methodology for Evaluating and Mitigating Congestion Risk		15

Energy Risk Management Policy

1.0 General Provisions

1.1 Background and Purpose of Policy

San Diego Community Power (SDCP) participates in energy markets for purposes of fulfilling its role as a Community Choice Aggregator serving retail electricity customers located within the San Diego region. This Energy Risk Management Policy (Policy) has been developed to facilitate the achievement of SDCP's organizational objectives while adhering to policies established by SDCP's Board of Directors (Board), power supply and related contract commitments, good utility practice, and applicable laws and regulations.

This Policy defines SDCP's general energy risk management framework and provides management with the authority to establish processes for monitoring, measuring, reporting, and controlling market and credit risks to which SDCP is exposed in its normal course of business.

1.2 Scope of Business and Related Market Risks

SDCP provides electric energy to retail customers within its service territory, which requires completion of the following business activities: bilateral purchases and sales of electricity under short-, medium- and long- term contracts; scheduling of load and generation of electricity into California Independent System Operator (CAISO) markets; retail marketing of electricity to consumers within its service territory; compliance with voluntary objectives and regulatory requirements that relate to carbon-free and Renewables Portfolio Standard (RPS) compliance; participation in the CAISO-administered Congestion Revenue Rights ("CRRs") market; management of the balance between load and generation over the short-, medium- and long-term planning horizons; and compliance with California Public Utilities Commission (CPUC) Resource Adequacy (RA) requirements. Participation in such activities expose SDCP to certain risks, which include, but are not limited to, the following:

- Market Price Risk
- Counterparty Credit and Performance Risk
- Load and Generation Volumetric Risk
- Operational Risk
- Liquidity Risk
- Regulatory/Legislative Risk

To mitigate SDCP's exposure to such risks, this Policy has been drafted to focus on the following areas of concern:

- Risk Management Goals and Principles
- Definitions of Risks
- Internal Control Principles
- Risk Management Business Practices
- Risk Management Governance

This Policy does not address the following types of general business risk, which should be treated separately in other policies, ordinances and regulations pertaining to SDCP: fire, accident and casualty;



health, safety, and workers' compensation; general liability; and other such typically insurable perils. The term "risk management," as used herein, is therefore understood to refer solely to market risks as defined herein, and not those other categories of risk.

1.3 Policy Administration

This version of the Energy Risk Management Policy was adopted by the SDCP Board of Directors on June 25, 2020. This Policy may be amended as needed by SDCP's Board. SDCP's Finance and Risk Management Committee (FRMC) may periodically recommend policy updates to the Board.

1.4 Policy Distribution and Acknowledgment

This Policy shall be distributed to all SDCP employees and third-party contractors who are engaged in the planning, procurement, sale and scheduling of electricity on SDCP's behalf and/or in other SDCP departments providing oversight and support for these activities. All such employees and contractors are required to confirm in writing on an annual basis that they have:

- Read SDCP's Risk Management Policy
- Understand the terms and agreements of said Policy
- Will comply with said Policy
- Understand that any violation of said Policy shall be subject to employee discipline up to and including termination of employment.

1.5 Policy Interpretation

Questions about the interpretation of any matters of the Policy should be referred to the Risk Management Committee. All legal matters stemming from this Policy will be referred to General Counsel.

2.0 Risk Management Goals

The goals of SDCP's energy risk management practices are to:

- [1] assist in achieving the business objectives of retail rate stability and competitiveness;
- [2] avoid losses and excessive costs, which would materially impact the financial condition of SDCP;
- [3] establish the parameters for energy procurement and sales activity to minimize costs while ensuring compliance with approved risk limits and policy objectives;
- [4] assist in assuring that market activities and transactions are undertaken in compliance with established procurement authorities, applicable laws, regulations and orders; and
- [5] encourage the development and maintenance of a corporate culture at SDCP in which the proper balance is struck between control and facilitation and in which professionalism, discipline, technical skills, and analytical rigor come together to achieve SDCP objectives.

3.0 Risk Management Principles



3.1 General Risk Management Principles

SDCP manages its energy resources and transactions with the objectives of reducing greenhouse gas emissions, supporting local economic development and providing customers with stable, competitive electric rates while contemporaneously minimizing risks. SDCP's risk management principles include the identification of relevant risks, systematic risk measurement and reporting, and strict adherence to established risk policies. SDCP will not engage in transactions without proper authorization or if such transactions are determined to be inconsistent with this Policy.

It is the policy of SDCP that all personnel, including the Board, management, and agents, adhere to standards of integrity, ethics, conflicts of interest, compliance with statutory law and regulations and other applicable SDCP standards of personal conduct while employed by or affiliated with SDCP.

3.2 Conflicts of Interest

All SDCP Directors, management, employees, consultants, and agents participating in any transaction or activity within the coverage of this Policy are obligated to give notice in writing to SDCP of any interest such person has in any counterparty that seeks to do business with SDCP, and to identify any real or potential conflict of interest such person has or may have with regard to any existing or potential contract or transaction with SDCP. Further, all persons are prohibited from personally participating in any transaction or similar activity that is within the coverage of this Policy, or prohibited by California Government Code § 1090, and that is directly or indirectly related to the trading of electricity and/or environmental attributes as a commodity.

If there is any doubt as to whether a prohibited condition exists, then it is the employee's responsibility to discuss the possible prohibited condition with her/his manager or supervisor.

3.3 Adherence to Statutory Requirements

Compliance is required with rules promulgated by the state of California, California Public Utilities Commission, California Energy Commission, Federal Energy Regulatory Commission(FERC), Commodity Futures Trading Commission(CFTC),and other regulatory agencies.

Congress, FERC and CFTC have enacted laws, regulations, and rules that prohibit, among other things, any action or course of conduct that actually or potentially operates as a fraud or deceit upon any person in connection with the purchase or sale of electric energy or transmission services. These laws also prohibit any person or entity from making any untrue statement of fact or omitting to state a material fact where the omission would make a statement misleading. Violation of these laws can lead to both civil and criminal actions against the individual involved, as well as SDCP. This Policy is intended to comply with these laws, regulations and rules and to avoid improper conduct on the part of anyone employed by SDCP. These procedures may be modified from time to time by legal requirements, auditor recommendations, FRMC and ROC requests, and other considerations.

In the event of an investigation or inquiry by a regulatory agency, SDCP will provide legal counsel to employees. However, SDCP will not appoint legal counsel to an employee if SDCP's General Counsel and Chief Executive Officer determine that the employee was not acting in good faith within the scope of employment. SDCP employees are prohibited from working for another power supplier, CCA or utility in a related position while they are simultaneously employed by SDCP unless an exception is authorized by



the Board. For clarity, this prohibition is not intended to prevent SDCP staff from performing non-CCA activities on behalf of SDCP in the normal course of its business.

3.4 System of Records

SDCP will maintain a set of records for all transactions executed in association with SDCP's procurement activities. The records will be maintained in US dollars and transactions will be separately recorded and categorized by type of transaction. This system of record shall be auditable.

4.0 Definitions of Market Risks

The term "market risks," as used herein, refers specifically to those categories of risk which relate to SDCP's participation in wholesale and retail markets as a Load Serving Entity (LSE) as well as SDCP's interests in certain long-term contracting opportunities. Market risks include market price risk, counterparty credit and performance risk, load and generation volumetric risk, operational risk and liquidity risk, as well as regulatory and legislative risk. These categories are defined and explained as follows.

4.1 Market Price Risk

Market price risk is defined as exposure to changes in wholesale energy prices. Market price risk is a function of price volatility and the volume of energy that is contracted at fixed prices over a defined period of time. Prices in electricity markets exhibit high volatility, and appropriate forward procurement and hedging approaches are necessary to manage exposure to pricing volatility within the CAISO or bilateral energy markets.

Market price risk is also impacted by market liquidity, which may be an issue for certain energy or capacity products that SDCP procures. Illiquid markets are characterized by relatively few buyers or sellers, making it more difficult to buy or sell a commodity and often resulting in higher premiums on purchases or deeper discounts on sales.

Another dimension of market price risk is congestion or "basis" risk. Congestion risks arise from the locational differences in prices between the point of delivery of SDCP's load (meaning, power consumed by customers) and its contracted supply.

For SDCP, market price risk manifests in two types of exposure. The first type of market price risk exposure is the potential for variations in power costs that are related to SDCP's "open positions", meaning the volume of energy that will ultimately be required for delivery to SDCP customers but that has not yet been purchased. Increases in market prices will increase SDCP's costs when those open positions are eventually filled at the higher prices. Incurrence of higher than anticipated power costs can reduce funds available for financial reserves or other planned uses and can lead to the need for rate increases. Market price risk exposure related to open positions are monitored through net open position valuations and value at risk metrics as described in Section 6.1 of this Policy.

The second type of market price risk exposure is the potential for wholesale trading positions, long-term supply contracts and generation resources to move "out of the money," that is, become less valuable when compared to similar positions, contracts or resources obtainable at present prices. These same positions can also be "in the money" if such positions become more valuable when compared to similar positions, contracts or resources obtainable at present market prices. This valuation methodology is

commonly referred to as “Mark to Market.” Transaction valuation and reporting of positions shall be based on objective, market observed prices. If SDCP is “out of the money” on a substantial portion of its contracts, it may have to charge higher retail rates relative to competitors. Such a situation could erode SDCP’s competitive position and market share if other market participants (e.g., Direct Access providers or SDG&E) are able to procure power at a lower cost and offer lower retail electric rates.

4.2 Counterparty Credit and Performance Risk

Performance and credit risk refer to the inability or unwillingness of a counterparty to perform according to its contractual obligations. Failure to perform may arise if an energy supplier fails to deliver energy as agreed. There are four general performance and credit risk scenarios:

- [1] counterparties and wholesale suppliers may fail to deliver energy or environmental attributes, requiring SDCP to purchase replacement products elsewhere, possibly at higher costs;
- [2] counterparties may fail to take delivery of energy or environmental attributes sold to them, necessitating a quick resale of the product elsewhere, possibly at a lower price;
- [3] counterparties may fail to pay for delivered energy or environmental attributes; and
- [4] counterparties and suppliers may refuse to extend credit to SDCP, possibly resulting in higher collateral posting costs, which could impact SDCP’s cash position and/or bank lines of credit.

An important subcategory of credit risk is concentration risk. When a portfolio of positions and resources is concentrated with one or a very small number of counterparties, generating resources, or geographic locations, it becomes more likely that major losses will be sustained in the event of non-performance by a counterparty/supplier or as a result of unexpected price fluctuations at one location.

4.3 Load and Generation Volumetric Risk

Energy deliveries must be planned in consideration of forecasted load. SDCP forecasts load over the long and short term and enters into long- and short-term fixed price energy contracts to hedge its load consistent with the provisions of its Integrated Resource Plan (IRP).

Load forecasting risk arises from inaccurate load forecasts and may result in the over- or under-procurement of energy and/or customer rate revenues that deviate from approved budgets. Energy delivery risk occurs if a generator fails to deliver expected or forecasted energy volumes. Variations in wind speed and cloud cover, for example, can also impact the respective amount of electricity generated by wind and solar resources. Furthermore, the occasional oversupply of power on California’s electric grid can lead to curtailment of energy deliveries or reduced revenue resulting from low or negative prices at certain energy delivery points. In general, weather is an important variable that can result in higher or lower electricity usage due to its impact of customer electricity usage (heating and cooling needs, for example) as well as energy production (by generators that are commonly impacted by ambient weather conditions).

In the CAISO markets this situation can result from both the oversupply and undersupply of electricity relative to SDCP’s load as well as the over- or under-scheduling of generation or load into the day ahead market (relative to actual energy consumed or delivered in the real-time market). Load and generation volumetric risk may result in unanticipated open positions and imbalance energy costs, which are assessed

when actual and scheduled loads do not align. More specifically, imbalance energy costs result from temporal pricing differences that often exist in the day-ahead and real-time energy markets during discrete scheduling intervals. For example, if SDCP's actual load is higher than scheduled in the day-ahead market, and real-time prices are comparatively high during such instances, then SDCP bears the risk of higher-than-anticipated energy costs due to such variation. .

4.4 Operational Risk

Operational risk consists of the potential for failure to execute and control business activities relative to plan. Operational risk includes the potential for:

- [1] organizational structure that proves to be ineffective in addressing risk, i.e., the lack of sufficient authority to make and execute decisions, inadequate supervision, ineffective internal checks and balances, incomplete, inaccurate and untimely forecasts or reporting, failure to separate incompatible functions, etc.;
- [2] absence, shortage or loss of key personnel or lack of cross-functional training;
- [3] lack or failure of facilities, equipment, systems and tools, such as computers, software, communications links and data services;
- [4] exposure to litigation or sanctions resulting from violating laws and regulations, not meeting contractual obligations, failure to address legal issues and/or receive competent legal advice, not drafting and analyzing contracts effectively, etc.; and
- [5] errors or omissions in the conduct of business, including failure to execute transactions, violation of guidelines and directives, etc.

4.5 Liquidity Risk

Liquidity Risk is the risk that SDCP will be unable to meet its financial obligations. This can be caused by unexpected financial events and/or inaccurate pro forma calculations, rate analyses, and debt analyses. Some unexpected financial events impacting liquidity could include:

- [1] breach of SDCP credit covenants or thresholds – SDCP has credit covenants included in its banking agreements and may, eventually, have similar covenants within its energy contracts. Breach of credit covenants or thresholds could result in the withdrawal of SDCP's line of credit or may trigger the requirement to post collateral;
- [2] contractual requirements to post collateral (with counterparties) due to a decline in market prices below the contract price; and
- [3] from time to time SDCP may be the subject of legal or other claims arising from the normal course of business. Payment of a claim by SDCP could reduce SDCP's liquidity if the cause of loss is not covered by SDCP's insurance policies.

4.6 Regulatory/Legislative Risk



Regulatory risk encompasses market structure and operational risks associated with shifting state and federal regulatory policies, rules, and requirements that could negatively impact SDCP. An example is the potential increase in exit fees for customers served by Community Choice Aggregators that could result in higher overall electricity costs for SDCP customers (relative to SDG&E or DA service options).

Legislative risk is associated with actions by federal and state legislative bodies, which may impose adverse changes or requirements that could infringe upon SDCP's autonomy, increase its costs, or otherwise negatively impact SDCP's ability to fulfill its goals and objectives.

5.0 Internal Control Principles

Internal controls are based on proven principles that meet or exceed the requirements of financial institutions and credit rating agencies while also being considerate of good utility practice. The required controls shall include all customary and usual business practices designed to prevent errors and improprieties, ensure accurate and timely reporting of results of operations as well as information pertinent to management, and facilitate attainment of business objectives. These controls shall remain fully integrated in all activities of the business and shall be consistent with stated objectives. There shall be active participation by senior management in risk management processes.

The required controls include the following:

[1] Segregation of duties and functions between front, middle, and back office activities. In general terms, the designation of responsibilities shall be organized as follows:

- Front office is responsible for planning (e.g. preparation of the IRP and other planning activities) and procurement (e.g. solicitation management, contract negotiation, structuring and pricing as well as contract execution), contract management, compliance and oversight of scheduling coordinator functions with the CAISO;
- Middle office is responsible for controls and reporting (e.g., risk monitoring, risk measurement, risk reporting, procurement compliance, counterparty credit review, approval and monitoring); and
- Back office is responsible for settlements and processing (e.g., verification, validation, reconciliation and analysis of transactions, tracking, processing and settlement of transactions).

[2] Delegation of authority as defined in section 6.5 (below) that is commensurate with responsibility and capability, and relevant training to ensure adequate knowledge to operate in and comply with rules associated with the markets in which such personnel may transact (e.g., CAISO). Contract origination, commercial approval, legal review, invoice validation, and transaction auditing shall be performed by separate staff or contractors for each transaction. No individual staff member shall perform all of these functions on a single transaction.

[3] Defining authorized products and transactions. In general terms, authorized and prohibited transactions are defined as follows:

- Authorized transactions are those transactions directly related to the procurement and/or administration of electric energy, reserve capacity, transmission and distribution service, ancillary services, congestion revenue rights, renewable energy, renewable energy credits, scheduling

activities, tolling agreements, and bilateral purchases of energy products. All transactions must be consistent with this Policy and the Board approved IRP.

- It is the expressed intent of this Policy to prohibit the acquisition of risk beyond that encountered in the efficient optimization of SDCP's generation portfolio and execution of procurement strategies. Prohibited transactions are those transactions that are not related to serving retail electric load and/or reducing financial exposure. Speculative buying and selling of energy products or maintenance of open positions that do not conform with agreed upon thresholds is prohibited. Speculation is defined as buying energy in excess of forecasted load plus reasonable planning reserves, intentionally under procuring energy relative to minimum load hedging targets or selling energy or environmental attributes that are not yet owned by SDCP. In no event shall speculative transactions be permitted. Any financial derivatives transaction including, but not limited to futures, swaps, options, and swap options are also prohibited. If any questions arise as to whether a proposed transaction(s) constitutes speculation, SDCP shall conduct an analysis of the transaction and the Board shall review the transaction(s) to determine whether the transaction(s) would constitute speculation and document its finding in the meeting minutes.

[4] Defining proper process for executing power supply contracts. SDCP will ensure power supply contracts are approved by pertinent technical personnel. Legal review will be required of various forms of agreement used by SDCP.

[5] Accurately capturing transactions and other data, with standardization of electronic and hard copy documentation.

[6] Summarizing and reporting of transactions and other activity at regular intervals.

[7] Measuring risk and performance in a timely manner and at regular intervals.

[8] Regularly reviewing compliance to ensure that this Policy and related risk management guidelines are adhered to, with specific guidelines for resolving instances of noncompliance.

[9] Ensuring active participation by senior management in risk management processes.

6.0 Risk Management Business Practices

6.1 Risk Measurement Metrics and Reporting

A vital element of this Policy is the regular identification, measurement and communication of risk. To effectively communicate risk, all risk management activities must be monitored on a frequent basis using risk measurement methodologies that quantify the risks associated with SDCP's procurement-related business activities and performance relative to stated goals.

SDCP measures and updates its risks using a variety of tools that model programmatic financial projections, market exposure and risk metrics, as well as through short-term budget updates. The following items are measured, monitored and reported:

[1] Mark-to-Market Valuation – marking to market is the process of determining the current value of contracted supply. A mark-to-market valuation shall be performed at least once per quarter.

[2] Exposure Reporting – calculates the notional dollar risk exposure and value at risk of open portfolio positions at current market prices. The exposure risk calculations shall be performed at least once per quarter.

[3] Open Position Monitoring – on a monthly basis, SDCP shall calculate/monitor its open positions for all energy and capacity products. If energy open positions for the month following the then current month (prompt month) exceed 10% of load, SDCP will solicit market energy to close open positions and make a commercial decision to close the position. Open positions for terms beyond the prompt month will be monitored monthly and addressed in accordance with SDCP's planning models and related policies.

[4] Counterparty Credit Exposure – calculates the notional and mark-to-market exposure to each SDCP counterparty by deal and in aggregate. Counterparty credit exposure shall be reported on a quarterly basis. Counterparty exposure reporting includes contingent collateral posting risks arising from changes in market prices and other factors.

[5] Reserve Requirement Targets – no less than once per year, SDCP staff will monitor SDCP's reserves to ensure that they meet the targeted thresholds.

Consistent with the above, the Middle Office will develop reports and provide feedback to the Risk Oversight Committee. If a limit or control established by this Policy is violated, the Middle Office will send notification to the responsible party and the Risk Oversight Committee. The Risk Oversight Committee will discuss the cause and potential remediation of any violation to determine next steps for curing the violation.

Risk measurement methodologies shall be re-evaluated on a periodic basis to ensure SDCP adjusts its methods to reflect the evolving competitive landscape.

6.2 Market Price Risk

SDCP manages market price risk using its planning models which define forecasted load, energy under contract and SDCP's open positions across various energy product types including renewable energy (Portfolio Content Category I, II and III), carbon-free energy and system power relative to SDCP's procurement targets.

SDCP determines the quantity of energy it intends to place under contract each year through the use of its planning models and in consideration of stated procurement targets. The planning models include an outline of the delivery term and quantity of each energy product that SDCP intends to fill in the upcoming year. The planning models inform SDCP's solicitation planning, including solicitation timing and strategy as well as the person/team responsible for related solicitations.

In general, SDCP will seek to purchase some long-term renewable energy each year for purposes of diversifying market exposure while also avoiding potential "planning cliffs", which can occur when a significant portion of long-term contracts expire at or near the same point in time.

For products generally purchased through short- and medium-term contracts, SDCP follows a similar temporal diversification strategy, with multiple procurement cycles occurring throughout the year.

Congestion risk is managed through the contracting process with a preference for day-ahead energy delivery at the SP 15 trading hub. Once energy is procured, SDCP manages congestion risks through the application of CRRs consistent with its Congestion Revenue Rights Risk Management Guidelines. CRRs are financial instruments used to hedge against transmission congestion costs encountered in the CAISO day-ahead market. SDCP uses a third-party scheduling coordinator to manage its CRR portfolio. SDCP primarily uses CRRs to reduce its exposure to congestion charges.

6.3 Counterparty Credit and Performance Risk

SDCP shall evaluate and monitor the financial strength of its suppliers in consideration of adopted Credit Guidelines. Generally, SDCP manages its exposure to energy suppliers by exhibiting a preference for counterparties with Investment Grade Credit ratings as determined by Moody's or Standard and Poor's and through the use of security requirements in the form of cash and letters of credit. SDCP measures its mark-to-market counterparty credit exposure consistent with industry best practices.

6.4 Load and Generation Volumetric Risk

SDCP manages energy delivery risks by ensuring that contracts include appropriate contractual penalties for non-delivery, acquiring energy from a geographically and technologically diverse portfolio of generating assets (with a range of generation profiles that are generally complementary to the manner in which SDCP's customers use electric power). Due to known production variability and supply uncertainty related to renewable and other carbon-free energy products, SDCP includes planning margins in its procurement of such products to ensure that related targets/mandates are achieved.

SDCP manages load forecasting and related weather risks by contracting with qualified data management and scheduling coordinators, which independently or jointly provide the systems and data necessary to forecast and schedule load using good utility practice. Load variability is also considered in establishing appropriate planning margins for renewable and other carbon free energy sources.

SDCP's load scheduling strategy, as executed by its scheduling coordinator, shall be in accordance with adopted Load Bidding/Scheduling Guidelines. This strategy shall ensure that price risk in the day-ahead and real-time CAISO markets is managed effectively and is consistent with good utility practice.

6.5 Operational Risk

Operational risks are managed through:

- Adherence to this Policy, and oversight of procurement activity including delegation of authority;
- Conformance with applicable human resources policies and guidelines;
- Staff resources, expertise and/or training reinforcing a culture of compliance;
- Use of qualified, highly experienced contractors on an as-needed basis in the event that necessary expertise does not exist within SDCP's own organization;
- Ongoing and timely internal and external audits; and
- Cross-training amongst staff

In order to ensure proper controls for executing energy transactions and to facilitate the efficient operation of SDCP in its ordinary course of business, the Board delegates transactional authority that is commensurate with responsibility and capability. Accordingly, by approving this Policy, the Board



delegates the following energy procurement authority by product type, tenor, volume, and notional value to its Chief Executive Officer:

Delegation of Authority per Transaction by Position/Title	Product Type	Tenor Limit	Volumetric Limit	Notional Value Limit
Chief Executive Officer	System Power	3 years	1,500,000 MWh	\$ 50,000,000
	Resource Adequacy	3 years	10,000 MW	\$ 50,000,000
	Renewables	3 years	2,500,000 MWh	\$ 50,000,000
	GHG-free	3 years	5,000,000 MWh	\$ 50,000,000
Risk Oversight Committee*				
SDCP Board	All Products	Any	Unlimited	Unlimited

* Limits delegated to the Risk Oversight Committee will be adopted following its formation.

The Board further delegates to the Chief Executive Officer all necessary and proper authority to negotiate and approve an administrative amendment to an existing Board approved contract where such amendment (a) does not exceed the Chief Executive Officer's delegated authority as set forth in the table above, and (b) further reduces SDCP's risk in furtherance of this Policy. An administrative amendment must be reported to the SDCP Board and at the next ROC meeting.

Any changes to the delegation of authority will require Board approval.

6.6 Liquidity Risk

SDCP manages liquidity risk through adherence to its loan and power purchase agreement credit covenants; limiting commitments to provide security consistent with adopted Credit Guidelines; ensuring it has adequate loan facilities, prudent cash and investment management; and adherence to any applicable reserve policies. SDCP monitors its liquidity (defined as unrestricted cash, investments, and unused bank lines of credit) no less than weekly. SDCP utilizes scenario and sensitivity analyses while preparing budget, rate, and pro forma analyses to identify potential financial outcomes and ensure sufficient liquidity under adverse conditions.

6.7 Regulatory/Legislative Risk

SDCP manages its regulatory and legislative risk through active participation in working groups and advocacy coalitions such as the California Community Choice Association. SDCP regularly participates in regulatory rulemaking proceedings and legislative affairs to protect SDCP's interests.

7.0 Risk Management Policy Governance

7.1 SDCP Board of Directors

The SDCP Board is responsible for adopting this Policy. The Board also approves SDCP's annual budget, contracting authorities and delegated responsibilities for the management of SDCP's operations to its Chief Executive Officer and staff.

7.2 Finance and Risk Management Committee

The FRMC is responsible for reviewing and recommending approval of substantive changes to this Policy, as needed, and for initiating and overseeing a review of the implementation of this Policy as it deems



necessary. The Chief Executive Officer and Risk Oversight Committee may make reports and seek approval for any substantive changes to this Policy from the FRMC, which will recommend changes to the Board.

7.3 Risk Oversight Committee (ROC)

To ensure with implementation and compliance with this Policy, the Chief Executive Officer will establish a Risk Oversight Committee prior to the commencement of retail electric service by SDCP. The members of the ROC will be selected by the Chief Executive Officer. The ROC will have authority to:

- Meet once per quarter, or as otherwise called to order by the Chair of the ROC.
- No less than once per quarter, provide a report to the FRMC regarding its meetings, deliberations and any other areas of concern.
- From time to time, adopt and/or adapt risk management guidelines defining internal controls, strategies and processes for managing market risks incurred through or attendant upon wholesale trading, retail marketing, long-term contracting, CRR trading and load and generation scheduling.
- Specify the categories of permitted transactions and set risk limits for wholesale trading. The ROC will receive and review information and reports regarding risk management, wholesale trading transactions, and the administration of supply contracts.
- Have direct responsibility for enforcing compliance with this Policy. Any gross violations to this Policy, as determined by the Chair of the ROC, shall be reported to the FRMC for appropriate action.

Addendum 1 to San Diego Clean Power's Energy Risk Management Policy: Methodology for Evaluating and Mitigating Congestion Risk

I. Transmission Costs

The CAISO has assumed operational control of all 66 kV and above voltage transmission of all Participating Transmission Owners (PTO) including private firms (such as Citizens Energy) that have turned their operating rights over to the CAISO. The CAISO operates this transmission to minimize daily transmission costs for the entire system.¹

Each PTO utility charges the CAISO the total cost of its transmission plus a rate of return on any owned transmission assets. The charge is called a utilities Transmission Revenue Requirement (TRR). The CAISO aggregates the TRRs of all PTOs and then divides this amount by the forecasted energy use on its system for the year in order to develop a transmission wheeling rate, or Transmission Access Charge (TAC) that is paid based upon the total metered load of the LSE. This rate is a "postage stamp" rate paid by the Load Serving Entity (LSE) that takes final delivery of the energy. It is called a postage stamp rate because every entity pays the same amount regardless of the voltage or how far energy is wheeled across the system.

Each LSE pays the Locational Marginal Price (LMP) for energy that it withdraws at its delivery point(s). The LMP has three components – 1) the marginal energy price that is the same for all LSEs in the CAISO for that period and market (day-ahead market, 5 and 15-minute market; 2) marginal transmission losses and 3) congestion costs.

Any generator or load can use the CAISO transmission system. To manage the use of the transmission system, the CAISO uses congestion pricing. In effect, if entities schedule more energy over a transmission path than the path's capacity, the CAISO begins increasing congestion charge to encourage entities to either move energy to other transmission paths or to back generation down that uses that path. The congestion charge will keep increasing until generation is reduced to the transmission limits over a specific path².

Congestion charges can be quite high over some constrained paths, sometimes more than the price of energy.

These rights to receive congestion charges are known as congestion revenue rights (CRRs). The CRR is a tradable commodity with entities being allowed to purchase and trade the rights to receive congestion charges over a specific transmission line segment. There are two ways LSE's acquire congestion rights; first, through a CAISO allocation process and, secondly, a CRR auction process.

The CAISO uses a three-stage process to allocate CRRs. First, an annual allocation process that is tied to generating resource ownership or control, then a monthly allocation process and finally a CRR auction process.

Congestion costs are charged on all paths so congestion payments at the end of a period should roughly equal congestion payments for the allocated CRRs. The CRRs created in the auction process are outside

¹In PG&E and SDG&E's service territory, the CAISO controls transmission lines equal to 66 kV or larger while in SCE's service territory the CAISO controls line 115 kV or greater.

² This is done by a mathematical algorithm approach that creates a large enough congestion charge to push higher priced resources out of the dispatch order.

the scope of the CAISO and those can result in significantly larger or smaller congestion payments than the congestion costs³

Load serving entities that use a specific transmission path are eligible to receive an allocation of free CRRs tied to the length of their ownership or power sales purchases from specific generators. Generally, only about two-thirds of the available transmission capacity in a path is allocated to LSEs requesting CRRs with the utility (or LSE) subject to congestion charges for the remaining generation. If the LSE wants to protect itself against congestion charges for all its generation, it will need to participate in the CRR monthly allocation process and CRR auctions and bid against other entities for the right to recover any potential congestion charges.

The CAISO allocates its transmission capacity to LSE's based upon existing unit specific generation contracts. If an LSE has a power purchase agreement (PPA) or generator entitlement, it can request CRRs from the CAISO through an annual or monthly allocation process. Because the revenues that the CAISO receives in congestion charges should approximately equal payments to CRR owners, the CAISO is indifferent to congestion revenues paid on a specific line so long as it does not allocate more transmission capacity than available on a specific path.

Entities requesting CRRs on a specific path will only receive their full request if the path has excess capacity after all existing CRR holders and LSE's without rights on a particular path have applied to the CAISO for transmission right during the annual allocation process. If the CAISO has already allocated all the CRRs on a path, the requesting entity may not receive any CRRs or only a portion of their request in the allocation process.

If an entity does not receive the desired allocation of CRRs, it can enter the CRR auction process. In the auction process, any (creditworthy) entity can offer to "buy or sell" CRR revenues for a price determined in a monthly auction along a specific transmission path. If an entity sells CRRs, it is responsible for paying the CRR costs to the purchasing entity.

The risk of a CRR is that if a LSE has CRRs over a particular path and the congestion changes to the opposite direction or has low congestion prices during the month, the owner of the CRRs could lose money. That is, acquiring CRRs is not a risk-free proposition. Generally, congestion costs are high for energy imported from the east into California and low for entities exporting from the basin.

SDCP will not acquire more CRRs on a particular path than what is needed to hedge existing power purchase agreements.

II. Evaluating SDCP Congestion Risk

SDCP does not currently have any generation resources although it has been allocated CRRs on some paths from SDG&E as part of the CCA creation process. SDCP does not know what CRRs SDG&E will initially allocate to it.

SDCP will begin evaluating the risk associated with each CRR as they take ownership. SDCP will use the following methodology for evaluating the risk of a unit CRR:

1. SDCP will calculate the monthly congestion on each path by calculating the average congestion cost for the past three (3) years.

³ For the past few years, payments to CRR holders has significantly exceeded revenues from congestion. As a result, the CAISO is redesigning the way payments are made to reduce payments on smaller lines with high congestion.

2. SDCP will calculate the mean on and off-peak congestion on each path and the standard deviation of the congestion pricing.
3. Using the mean and the standard deviation along each path, SCP will estimate the expected range of congestion costs along each path.
 - a. SDCP will attempt to determine if any paths are expected to be out of service or constrained for any month based upon available planned outage data. Planned outages will affect historic averages.
4. The expected congestion cost will be used to estimate SDCP's monthly congestion exposure and confidence interval of the results.

An example of the calculations to determine monthly risk and standard deviation is shown in Appendix 1.

SDCP will always participate in the annual and monthly allocation process as a no-cost means of reducing congestion risk. Participation in the auction process will depend upon the potential exposure along a path and how the congestion risk affects SDCP's total power supply costs as outlined in SDCP's Risk Management Plan.





SAN DIEGO COMMUNITY POWER Staff Report – Item 11

To: San Diego Community Power Board of Directors
From: Laura Fernandez, Director of Regulatory and Legislative Affairs
Via: Bill Carnahan, Interim Chief Executive Officer
Subject: Update on Regulatory and Legislative Affairs
Date: December 16, 2021

RECOMMENDATION

Receive and file update on regulatory and legislative affairs.

BACKGROUND

Staff will provide regular updates to the Board of Directors regarding SDCP's regulatory and legislative engagement. The following is an overview of this month's discussion items, which are informational only.

ANALYSIS and DISCUSSION

A) SDG&E Application for Approval of 2022 Electric Procurement Revenue Requirement Forecasts

On April 15, 2021, SDG&E filed its [Application](#) for Approval of its 2022 Electric Procurement Revenue Requirement Forecasts and GHG-related forecasts. SDG&E requested approval of a total 2022 forecasted revenue requirement of \$693.090 million. In the application, SDG&E noted that these changes, if approved as is, would *decrease* the current system average rate by 4.752 cents per kilowatt hour, or 17.28%. These rates would be implemented on January 1, 2022. However, SDG&E also noted in its application that these projections could change if the CPUC approves SDG&E's request to update its authorized sales in its 2022 sales forecast application.

SDCP filed a [protest](#) to the application on May 21, 2021. In the protest, SDCP noted that last year, in the 2021 Energy Resources Recovery Account (ERRA) Forecast Application, SDG&E declined to calculate the 2021 commodity rate forecast using an updated retail sales forecast that was consistent with the 2021 bundled energy requirements forecast used to derive the ERRA revenue requirement. The stale sales forecast employed by SDG&E to calculate bundled commodity rates failed to account for significant community choice aggregator (CCA) load departure in early 2021, resulting in an artificially low

bundled customer rate forecast. Despite acknowledging the misaligned data in its 2021 commodity rate forecast, SDG&E claimed that it was required to use the outdated sales forecast because it was the most recent forecast approved by the CPUC. The CPUC, however, rejected SDG&E's arguments. SDCP noted in a protest this year that SDG&E once again repeated history when it declined to use the most recent sales forecast to calculate the commodity rate for the 2022 ERRA forecast. SDCP staff with the assistance of outside consultants and external legal counsel raised this issue at every opportunity. Ultimately, SDCP prevailed on this issue as well as a number of other issues in the proceeding.

On December 1, the CPUC issued a [Proposed Decision](#) (PD) in this proceeding, which overall is very positive news for SDCP. In total, the changes in the PD will *increase* the current system average bundled rate by 1.382 cents per kilowatt hour, or 4.93%. Additionally, the PD uses the 2022 bundled sales forecast, as advocated for by SDCP, and also agrees with SDCP that future annual ERRA forecasts and sales forecasts should be filed as nearly simultaneously as possible. The PD further states that consolidating the annual ERRA Sales Forecast with annual ERRA Forecast has merit. Future integration of the up-to-date sales forecast into the ERRA Forecast Application will create an efficient process for developing rates that are based on the most accurate and up-to-date information, which is an excellent outcome for all customers, bundled and unbundled alike.

SDCP also prevailed on several other issues. First, the PD denied SDG&E's requests to delay recovery of its 2018 and 2019 Green Tariff Shared Renewables (GTSR) Balancing Account (GTSRBA) until April 1, 2022, and amortize the balance over 21 months. SDCP urged the Commission in a previous [Response](#) to reject this proposal as it could have resulted in a cost shift of millions of dollars. Rejecting SDG&E's proposal to prolong recovery of its GTSRBA will help ensure that only participating customers bear the costs of the GTSR program.

Second, the PD agrees that SDG&E must include workpapers from the prior ERRA Forecast proceeding in its response to the Master Data Request for all future SDG&E ERRA Forecast applications. SDCP had reiterated the importance of these workpapers previously, and the consequences of SDG&E's resistance to transparency were demonstrated when SDG&E revealed that it had discovered an error in its projected Portfolio Allocation Balancing Account (PABA) billed revenue for 2021, which led to a roughly \$100 million reduction in its projected 2021 year-end PABA balance overcollection and subsequently the PCIA revenue requirement. This error led to SDG&E initially forecasting significantly lower PCIA rates in its Application than it would have with correct data, which resulted in confusion and could have led to faulty price signals. Requiring inclusion of these workpapers in future proceedings will help SDCP ensure that rates are accurate and fair for all customers.

Finally, the PD ordered that SDG&E must include certain testimony in future ERRA proceedings that ensures that its ERRA-related applications are competent, complete, and accurate. Ultimately, the PD is a great outcome for SDCP and all customers, as it



demonstrates a commitment to both prevent cross-subsidization and ensure that future rates are accurate, just, and reasonable. SDCP did file [Comments](#) in support of the PD and made a few requests for minor modifications that will hopefully be reflected in the final decision. The CPUC is expected to vote on a final decision in this proceeding on December 16, 2021.

B) Net Energy Metering 3.0 Proceeding

Background

The Net Energy Metering (NEM) program is designed to support the installation of customer-sited renewable generation. It was originally established in California with the adoption of Senate Bill (SB) 656 (Alquist, Stats. 1995, ch. 369), codified in Section 2827 of the Public Utilities Code. Importantly, Public Utilities Code Section 2827.1 only applies to large electrical corporations, and thereby excludes community choice aggregators (CCAs) such as SDCP. This is because CCAs are legally entitled to set their own electricity generation rates. CCAs therefore determine their own rate policies, including NEM and net surplus compensation policies.

Under the original NEM program, customers who install and operate small (1MW or less) renewable generation facilities (referred to as “customer-generators”) may participate. Previously, under the original NEM rate, customer-generators received a full retail rate bill credit for power generated by their onsite systems that was fed back into the power grid during times when generation exceeded onsite energy demand. These credits were used to offset customers’ electricity bills, and could be rolled over to subsequent bills for up to a year.

[AB 327](#) (Pereda, 2013) directed each large investor-owned utility (IOU) to switch over to the current NEM tariff on July 1, 2017, or after their NEM capacity exceeded 5% aggregated customer peak demand, whichever came first. SDG&E transferred to the current NEM tariff on June 29, 2016. Customer-generators that interconnected their systems to the grid prior to this date were grandfathered into the former NEM rate, pursuant to Decision [\(D.\)14-03-041](#). These customer-generators are allowed to remain on the former rate for 20 years from the date they interconnected, or they are permitted to switch to the current NEM rate. The former NEM rate is sometimes referred to as “NEM 1.0”, and the current NEM rate as “NEM 2.0” or “NEM Successor Tariff.”

The current NEM program was adopted by the CPUC in [D.16-01-044](#) on January 28, 2016 and is available to customers of the large IOUs. The program provides customer-generators full retail rate credits for energy exported to the grid and requires them to pay a few charges that align NEM customer costs more closely with non-NEM customer costs. Any customer-generator applying for NEM will:

- Pay a one-time interconnection fee: Customer-generators with facilities under 1 MW must pay a pre-approved one-time interconnection fee based on each IOU's historic interconnection costs. SDG&E's is \$132.
- Pay non-bypassable charges: Customer-generators, similar to other utility customers, will pay charges on each kilowatt-hour (kWh) of electricity they



consume from the grid. These charges fund programs such as low-income and energy efficiency programs.

- Transfer to a time-of-use (TOU) rate. If a customer-generator is not already on one, they will be required to take service on a time-of-use (TOU) rate to participate in NEM.

NEM 3.0

D.16-01-044 also established the CPUC's commitment to review the NEM 2.0 tariff in 2019 (or later) citing interactive, yet unresolved, policy movements within the CPUC, but outside the scope of that proceeding. On September 3, 2020 the CPUC initiated a new rulemaking (R.) [20-08-020](#) in order to address the development of a successor to the existing NEM 2.0 tariffs. This proceeding is known as the NEM 3.0 proceeding. SDCP is a party to the NEM 3.0 rulemaking.

On March 15, 2021, eighteen proposals for a successor to the current NEM tariff were filed by a wide range of parties in the proceeding, including the Joint IOUs, Sierra Club, The Utility Reform Network, Natural Resources Defense Council, Solar Energy Industries Association, Vote Solar, Small Business Utility Advocates, Coalition for Community Solar Access, Protect Our Communities Foundation, GRID Alternatives, among others.

On May 28, 2021, a comparative analysis of the cost-effectiveness of the NEM successor rate proposals prepared by E3 was issued, and an update was released on June 15, 2021. Additionally, opening testimony was filed by parties in the proceeding on June 18, 2021, and rebuttal testimony was submitted July 16. Evidentiary hearings took place from July 26 until August 9.

SDCP filed a [Reply Brief](#) on September 14, 2021, at which point the proceeding was considered submitted, meaning that the next procedural step is a Proposed Decision. The procedural schedule indicates that a Proposed Decision will be issued within 90 days of reply briefs, which means a Proposed Decision should be issued by or on December 13, 2021.

COMMITTEE REVIEW

N/A



SAN DIEGO COMMUNITY POWER

Staff Report – Item 13

To: San Diego Community Power Board of Directors

From: Ryan Baron, General Counsel

Subject: Review of Draft Amended and Restated SDCP Joint Powers Agreement

Date: December 16, 2021

RECOMMENDATION

Approve Amended and Restated Joint Powers Agreement and conforming revisions to the Bylaws by a two-thirds vote.

BACKGROUND

Effective October 1, 2019, SDCP's five (5) Founding Members adopted a Joint Powers Agreement ("JPA Agreement") establishing the San Diego Regional Community Choice Energy Authority. Pursuant to the first amendment to the JPA Agreement, the Authority was re-named San Diego Community Power ("SDCP") on November 19, 2019.

On June 24, 2021, the Board of Directors discussed the prospective addition of new Member Agencies and established an ad hoc committee to work with staff to review the SDCP JPA Agreement and recommend changes related to the addition of new Member Agencies and its effect on Board voting and weighted votes. The ad hoc committee and staff met and discussed the prospective addition of new Member Agencies and potential changes to the JPA Agreement relating to Board voting and weighted votes. The ad hoc committee and staff also discussed making the proposed changes through an "Amended and Restated" version of the JPA Agreement that would make changes to the weighted vote provisions as well as other minor or clarifying changes.

On October 28, 2021, the Board of Directors considered the draft Amended and Restated JPA Agreement. The Board voted unanimously to direct staff to provide the SDCP Member Agencies (including the County of San Diego and City of National City as incoming Member Agencies), with a copy of the draft Amended and Restated JPA Agreement and conforming changes to the SDCP Bylaws and to place the Amended and Restated JPA Agreement and updated Bylaws on a future Board agenda for final approval.

Under Section 4.12.2 of the JPA Agreement, the Board of Directors of SDCP may amend the JPA Agreement and Bylaws by a two-thirds vote of the Board.

ANALYSIS AND DISCUSSION

Amended and Restated JPA Agreement

The proposed Amended and Restated SDCP JPA Agreement includes the following changes compared to the original JPA Agreement:

1. Incorporates the name “San Diego Community Power” or “SDCP” throughout
2. Updates the recitals to reflect the prior history of the JPA Agreement and first amendment (Recital 1)
3. Adds Exhibit F, where the signature pages of new Member Agencies will be added as they join SDCP, and providing a template signature page for new Member Agencies (Section 2.4.4; Exhibit F)
4. Updates the procedures for holding a Voting Shares Vote when SDCP has eight (8) or more Directors (Section 4.11.2(a))
 - Under the original JPA Agreement, three (3) or more Directors have the right to request a Voting Shares Vote. A Voting Shares Vote can be used to reconsider an action that was approved by an Equal Vote. In order to nullify an action approved by an Equal Vote, a Voting Shares Vote must pass by a two-thirds supermajority (66.7%), based on the voting shares in Exhibit D. Put differently, the JPA Agreement allows agencies representing a very large amount of SDCP’s electric load the opportunity to nullify a Board action taken by an Equal Vote, assuming there are a sufficient number of Directors desiring to call a Voting Shares Vote.
 - With the addition of multiple new Member Agencies, the three (3) Director threshold for requesting a Voting Shares Vote would become easier to achieve, allowing an increasingly smaller proportion of the Board to request a Voting Shares Vote.
 - In order to maintain a meaningful threshold for requesting a Voting Shares Vote, the proposed Amended and Restated JPA Agreement would increase the threshold for requesting a Voting Shares Vote when SDCP has eight or more Directors.
 - Under the proposed language, when the Board has eight (8) or more Directors, the number of Directors required to call a Voting Shares Vote would be one less than a quorum of the Board. Until there are eight (8) or more Directors, the current requirement of three (3) Directors would remain in place. For example:



- When SDCP has 5–7 Directors, the threshold for requesting a Voting Shares Vote would remain three (3) Directors.
 - If SDCP has 8–9 Directors, the threshold for requesting a Voting Shares Vote would be four (4) Directors.
 - If SDCP has 10 Directors, the threshold for requesting a Voting Shares Vote would be five (5) Directors, etc.
5. Clarifying that the annual energy use used to calculate each agency's voting shares is based on a calendar year (as opposed to fiscal year) (Section 4.11.3(a))
 6. Clarifying that Exhibit D (Voting Shares) will be updated annually by March 1 and at other times as necessary to account for the addition of new Member Agencies (Section 4.11.3(b))
 7. Changing the election of Board Chair and Vice-Chair from the beginning of the fiscal year to the beginning of each calendar year to better align with Member Agencies' appointments to the Board, and for the Chair and Vice-Chair to serve for one year *or* until a successor is elected (Sections 5.1 and 5.2)
 8. Clarifying that alternate Directors may be appointed to serve on the Finance and Risk Management Committee (Section 5.10.2)

In addition, based on a comment received from a Member Agency since the October Board meeting, the draft has been updated to clarify that October 1, 2019 will remain the "Effective Date" of the JPA Agreement. These changes are in Section 2.1 and Exhibit A (Definitions).

Updates to SDCP Bylaws

Because many of SDCP's Bylaws are based on language in the JPA Agreement, certain Bylaw provisions would need to be updated to ensure consistency with the proposed Amended and Restated JPA Agreement. The proposed Bylaw revisions were provided to the Member Agencies along with the draft Amended and Restated JPA Agreement.

FISCAL IMPACT

None

ATTACHMENTS

Attachment A: Draft Resolution Approving Amended & Restated JPA Agreement and Updated Bylaws

Attachment B: Clean Draft Amended and Restated Agreement

Attachment C: Clean Draft Bylaws

Attachment D: Redline of Amended and Restated JPA Agreement

Attachment E: Redline of Updated Bylaws



RESOLUTION NO. 07

A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER APPROVING AN AMENDED AND RESTATED JOINT POWERS AGREEMENT AND BYLAW REVISIONS

WHEREAS, San Diego Community Power ("SDCP") is a joint powers agency 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"); and

WHEREAS, Section 4.12.2 of the JPA Agreement provides that the Board of Directors may amend the JPA Agreement and adopt or amend the Bylaws by a two-thirds vote; and

WHEREAS, the Board of Directors desires to amend the JPA Agreement to make changes to the weighted vote provisions of the JPA Agreement and to make other minor or clarifying changes, all of which are contained in the proposed Amended and Restated JPA Agreement attached hereto as Attachment A; and

WHEREAS, the Board of Directors also desires to make changes to the Bylaws to ensure consistency between the Bylaws and the Amended and Restated JPA Agreement, and the proposed updated Bylaws are attached hereto as Attachment B.

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

Section 1. The Board of Directors hereby approves the Amended and Restated JPA Agreement as shown in Attachment A and the updated Bylaws as shown in Attachment B. The Board of Directors hereby authorizes the Chair, for and on behalf of SDCP, to execute the signature page of the Amended and Restated JPA Agreement.

Section 2. Notwithstanding the approval of this Resolution, future amendments to the Bylaws may be approved by an adopted motion of the Board of Directors receiving the required two-thirds vote. A resolution shall not be required for such amendments.

Section 3. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Board of Directors hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

Section 4. Except as otherwise expressly set forth herein, this Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by a two-thirds vote at a meeting of the Board of Directors of San Diego Community Power held on December 16, 2021.

Chair, Board of Directors
San Diego Community Power

ATTEST:

Secretary, Board of Directors
San Diego Community Power

San Diego Community Power

- Joint Powers Agreement –

Amended and Restated Effective December 16, 2021

Previous Versions/Amendments:

Original Agreement Effective October 1, 2019

First Amendment Effective November 22, 2019

SAN DIEGO COMMUNITY POWER

JOINT POWERS AGREEMENT

This Joint Powers Agreement (the “Agreement”), first effective as of October 1, 2019, and amended and restated effective December 16, 2021, is made by the Founding Members of San Diego Community Power including cities of San Diego, Chula Vista, La Mesa, Encinitas, and Imperial Beach, and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the public agencies set forth in **Exhibit B**.

RECITALS

1. Effective October 1, 2019, the Founding Members entered into that certain Joint Powers Agreement for the San Diego Regional Community Choice Energy Authority (“Original Agreement”), which among other things established a separate public agency in order to collectively study, promote, develop, conduct, operate, and manage energy programs. On November 22, 2019, the Board of Directors approved the First Amendment to the Original Agreement to change the agency’s name from the “San Diego Regional Community Choice Energy Authority” to “San Diego Community Power.” The Board of Directors now desires, pursuant to Section 4.12.2(c), to amend and restate the Original Agreement as set forth herein.
2. The Parties are public agencies sharing various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and their inhabitants.
3. SB 350, adopted in 2015, mandates a reduction in greenhouse gas emissions to 40 percent below 1990 levels by 2030 and to 80 percent below 1990 levels by 2050. In 2018, the State Legislature adopted SB 100, which directs the Renewable Portfolio Standard to be increased to 60% renewable by 2030 and establishes a policy for eligible renewable energy resources and zero-carbon resources to supply 100 percent of electricity retail sales to California end-use customers by 2045.
4. The purposes for the Founding Members (as such term is defined in Exhibit A) entering into this Agreement include procuring/developing electrical energy for customers in participating jurisdictions, addressing climate change by reducing energy-related greenhouse gas emissions, promoting electrical rate price stability, and fostering local economic benefits such as job creation, local energy programs and local power development. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to State, regional, and local solar and wind energy production and energy storage.
5. The Parties to this Agreement have established a separate public agency, known as San Diego Community Power (“SDCP”), under the provisions of the Joint Exercise of Powers

Act of the State of California (Government Code Section 6500 et seq.) (“Act”) in order to collectively study, promote, develop, conduct, operate, and manage energy programs.

6. The Founding Members have each adopted an ordinance electing to implement through SDCP a Community Choice Aggregation program pursuant to California Public Utilities Code Section 366.2 (“CCA Program”). The first priority of SDCP will be the consideration of those actions necessary to implement the CCA Program on behalf of participating jurisdictions.
7. By establishing SDCP, the Parties seek to:
 - (a) Provide electricity service to residents and businesses located within the municipal boundaries of the public agencies that signed on to this agreement in a responsible, reliable, innovative, and efficient manner;
 - (b) Provide electric generation rates to all ratepayers that are lower or at least competitive with those offered by the Investor Owned Utility (IOU), San Diego Gas & Electric (SDG&E), for similar products;
 - (c) Offer differentiated energy products for standard commodity electric service that provide a cleaner power portfolio than that offered by the IOU for similar service and a 100 percent renewable content option in which communities and customers may “opt-up” and voluntarily participate, with the ultimate objective of achieving—and sustaining—100 percent renewable energy availability and usage, at competitive rates, within SDCP service territory by no later than 2035, and then beyond;
 - (d) Develop an aggregate electric supply portfolio with overall lower greenhouse gas (GHG) emissions than the IOU, and one that supports near-term achievement of the Parties’ greenhouse gas reduction goals and renewable electricity goals;
 - (e) Prioritize the use and development of local, cost-effective renewable and distributed energy resources in ways that encourage and support local power development and storage, avoids the use of unbundled renewable energy credits, and excludes coal and avoids nuclear contracts;
 - (f) Promote an energy portfolio that incorporates energy efficiency and demand response programs and pursues ambitious energy consumption reduction goals;
 - (g) Provide a range of energy product and program options, available to all Parties and customers, that best serve their needs, their local communities, and support regional sustainability efforts.
 - (h) Demonstrate quantifiable economic benefits to the region including prevailing wage jobs, local workforce development, economic development programs, new energy programs, and increased local energy investments;

- (i) To the extent authorized by law, support a stable, skilled, and trained workforce through a variety of mechanisms, including neutrality agreements, that are designed to ensure quality workmanship at fair and competitive rates and which benefit local residents by delivering cost-effective clean energy programs and projects;
- (j) Promote supplier and workforce diversity, including returning veterans and those from regional disadvantaged and under-represented communities of concern, to reflect the diversity of the region;
- (k) Promote personal and community ownership of renewable generation and energy storage resources, spurring equitable economic development and increased resilience throughout the region.
- (l) Ensure that low-income households are provided with affordable electric rates and have access to special utility rates including California Alternative Rates for Energy (CARE) and Family Electric Rate Assistance (FERA) programs;
- (m) Pursue purposeful and focused investment in communities of concern, prioritization of local renewable power, workforce development, and policies and programs centered on economic, environmental, and social equity.
- (n) Use discretionary program revenues to support SDCP's long-term financial viability, enhance customer rate stability, and provide all Parties and their customers with access to innovative energy programs, projects and services throughout the region; and
- (o) Create an administering SDCP that is financially sustainable, responsive to regional priorities, well-managed, and a leader in fair and equitable treatment of employees through adopting appropriate best practice employment policies, including but not limited to efficient consideration of petitions to unionize, participating in collective bargaining, if applicable, and providing appropriate wages and benefits.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

1. **DEFINITIONS AND EXHIBITS**

- 1.1 **Definitions.** Capitalized terms used in this Agreement shall have the meanings specified in **Exhibit A**, unless the context requires otherwise.
- 1.2 **Documents Included.** This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement:

Exhibit A: Definitions
Exhibit B: List of Founding Members
Exhibit C: Annual Energy Use by Jurisdiction
Exhibit D: Voting Shares of Founding Members
Exhibit E: Signature Pages of Founding Members on Original Agreement
Exhibit F: Signature Pages of Additional Parties

2. FORMATION OF SAN DIEGO COMMUNITY POWER

- 2.1 **Effective Date and Term.** This Agreement became effective and SDCP began to exist as a separate public agency on October 1, 2019. This Agreement was amended and restated effective December 16, 2021. SDCP shall continue to exist, and this Agreement shall be effective, until the Agreement is terminated in accordance with Section 8.4 (Mutual Termination) of this Agreement, subject to the rights of the Parties to withdraw from SDCP, pursuant to Section 8.1.
- 2.2 **Formation of SDCP.** Under the Act, the Parties hereby create a separate joint exercise of power agency which is named San Diego Community Power (formerly known as the San Diego Regional Community Choice Energy Authority). Pursuant to Sections 6506 and 6507 of the Act, SDCP is a public agency separate from the Parties. The jurisdiction of SDCP shall be all territory within the geographic boundaries of the Parties; however, SDCP may, as authorized under applicable law, undertake any action outside such geographic boundaries as is necessary and incidental to the accomplishment of its purpose.
- 2.3 **Purpose.** The purpose and objectives of this Agreement are to establish SDCP, to provide for its governance and administration, and to define the rights and obligations of the Parties. This Agreement authorizes SDCP to provide opportunities by which the Parties can work cooperatively to create economies of scale, provide for stronger regulatory and legislative influence at the State level, and implement sustainable energy initiatives that reduce energy demand, increase energy efficiency, and advance the use of clean, efficient, and renewable resources in the region for the benefit of all the Parties and their constituents, including, but not limited to, establishing and operating a Community Choice Aggregation program.
- 2.4 **Addition of Parties.** After the initial formation of SDCP by the Founding Members, any incorporated municipality, county, or other public agency authorized to be a community choice aggregator under Public Utilities Code Section 331.1 located within the service territory of the IOU may apply to and become a member of SDCP if all the following conditions are met:
- 2.4.1 The adoption by a two-thirds vote of the Board satisfying the requirements described in Section 4.11 (Board Voting) of this Agreement, of a resolution authorizing membership into SDCP;

- 2.4.2 The adoption by the public agency of a CCA ordinance as required by Public Utilities Code Section 366.2(c)(12) and approval and execution of this Agreement and other necessary program agreements by the public agency;
- 2.4.3 Payment of a membership fee, if any, as may be required by the Board to cover SDCP costs incurred in connection with adding the new party; and
- 2.4.4 Satisfaction of any other reasonable conditions established by the Board.

Pursuant to this Section 2.4 (Addition of Parties), all Parties shall be required to commence electric service as soon as is practicable within statutory and regulatory requirements, as determined by the Board and SDCP management, as a condition to becoming a Party to this Agreement. Following satisfaction of the above conditions, SDCP shall ministerially add the new Party's signature page to Exhibit F of this Agreement and circulate a copy of the Agreement to all of the Parties.

- 2.5 **Continuing Participation.** The Parties acknowledge that membership in SDCP may change by the addition, withdrawal and/or termination of Parties. The Parties agree to participate with such other Parties as may later be added by the Board, as described in Section 2.4 (Addition of Parties) of this Agreement. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

3. **POWERS**

- 3.1 **General Powers.** SDCP shall have the powers common to the Parties which are necessary or appropriate to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 3.4 (Limitation on Powers) of this Agreement.
- 3.2 **Specific Powers.** Specific powers of SDCP shall include, but not be limited to, each of the following powers, which may be exercised at the discretion of the Board:
 - 3.2.1 make and enter into contracts;
 - 3.2.2 employ agents and employees, including but not limited to a Chief Executive Officer;
 - 3.2.3 acquire, own, contract, manage, maintain, and operate any buildings, public works, improvements or other assets including but not limited to public electric generation resources;
 - 3.2.4 acquire property for electric generation/interconnection purposes by eminent domain, or otherwise, except as limited under Section 6508 of the

Act and Sections 3.6 and 4.12.3 of this Agreement, and to hold or dispose of any property; provided, however, SDCP shall not exercise the power of eminent domain within the jurisdiction of a Party over its objection;

3.2.5 lease any property;

3.2.6 sue and be sued in its own name;

3.2.7 incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers authorized by law pursuant to Government Code Section 53850 et seq. and authority under the Act;

3.2.8 issue revenue bonds and other forms of indebtedness;

3.2.9 apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state or local public agency;

3.2.10 form independent corporations or entities, if necessary, to carry out energy supply and energy conservation programs at the lowest possible cost or to take advantage of legislative or regulatory changes;

3.2.11 submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;

3.2.12 adopt rules, regulations, policies, bylaws and procedures governing the operation of SDCP;

3.2.13 make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services;

3.2.14 enter into neutrality agreements where SDCP has a proprietary or significant financial interest, negotiate project labor agreements, community benefits agreements and collective bargaining agreements with the local building trades council and other interested parties; and

3.2.15 receive revenues from sale of electricity and other energy-related programs.

3.3 **Additional Powers to be Exercised.** In addition to those powers common to each of the Parties, SDCP shall have those powers that may be conferred upon it by law and by subsequently enacted legislation.

- 3.4 **Limitation on Powers.** As required by Section 6509 of the Act, the powers of SDCP are subject to the restrictions upon the manner of exercising power possessed by the City of Encinitas and any other restrictions on exercising the powers of SDCP that may be adopted by the Board.
- 3.5 **Obligations of SDCP.** The debts, liabilities, and obligations of SDCP shall not be the debts, liabilities, and obligations of any of the Parties unless a Party agrees in writing to assume any of the debts, liabilities, and obligations of SDCP with the approval of its Governing Body, in its sole discretion. In addition, pursuant to the Act, no Director shall be personally liable on the bonds or subject to any personal liability or accountability by reason of the issuance of bonds.
- 3.6 **Compliance with Local Zoning and Building Laws.** Notwithstanding any other provisions of this Agreement or state law, any facilities, buildings or structures located, constructed or caused to be constructed by SDCP within the territory of SDCP shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities are constructed.
- 3.7 **Compliance with the Political Reform Act and Government Code Section 1090.** SDCP and its officers and employees shall comply with the Political Reform Act (Government Code Section 81000 et seq.) and Government Code Section 1090 et seq. The Board shall adopt a Conflict of Interest Code pursuant to Government Code Section 87300. The Board may adopt additional conflict of interest regulations in the Operating Policies and Procedures.

4. GOVERNANCE

4.1 Board of Directors.

- 4.1.1 The Governing Body of SDCP shall be a Board of Directors (“Board”) consisting of two Directors for each Party appointed in accordance with Section 4.2 (Appointment and Removal of Directors) of this Agreement until there are five or more Parties of SDCP. When the fifth Party joins SDCP, the number of Directors per Party shall be reduced to one Director per Party; each Party shall determine which Director shall be that Party’s representative on the Board within 45 days of the date the fifth Party joins SDCP.
- 4.1.2 Each Director(s) must be a member of the Governing Body of the appointing Party. Each Director shall serve at the pleasure of the Governing Body of the Party whom appointed such Director and may be removed as Director by such Governing Body at any time. If at any time a vacancy occurs on the Board, then a replacement shall be appointed to fill the position of the previous Director within 45 days after the date that position becomes vacant.

- 4.1.3 Once SDCP reaches five members and becomes governed by a single appointed Director for each Party, then the Governing Body of each Party shall appoint an alternate to serve in the absence of the primary Director. The alternate is not required to be a member of the Governing Body of the appointing Party. The alternate shall have all the rights and responsibilities of the primary Director when serving in his/her absence.
- 4.1.4 Any change to the size and composition of the Board other than what is described in this section shall require amendment of this Joint Powers Agreement in accordance with Section 4.12.
- 4.2 **Appointment and Removal of Directors.** The Directors shall be appointed and may be removed as follows:
 - 4.2.1 The Governing Body of each Party shall appoint and designate in writing two regular Directors if there are four or fewer Parties to this Agreement, or one regular Director if there are five or more Parties to this Agreement, who shall be authorized to act for and on behalf of the Party on matters within the powers of SDCP. The Governing Body of each Party shall appoint and designate in writing one alternate Director if there are five or more Parties in SDCP who may vote on matters when the regular Director is absent from a Board meeting. The alternate Director may serve on committees, vote on matters in committee, chair committees, and fully participate in discussion and debate during meetings. All Directors and alternates shall be subject to the Board's adopted Conflict of Interest Code.
 - 4.2.2 SDCP's policies and procedures, to be developed and approved by the Board, pursuant to Section 3.2.12, shall specify the reasons for and process associated with the removal of an individual Director for cause. Notwithstanding the foregoing, no Party shall be deprived of its right to seat a Director on the Board and any such Party for which its Director and/or alternate Director have been removed may appoint a replacement.
- 4.3 **Director Compensation.** The Board may adopt by resolution a policy relating to the compensation of its Directors.
- 4.4 **Terms of Office.** Each Party shall determine the term of office for their regular and alternate Director.
- 4.5 **Purpose of Board.** The general purpose of the Board is to:
 - 4.5.1 Provide structure for administrative and fiscal oversight;
 - 4.5.2 Retain a Chief Executive Officer to oversee day-to-day operations of SDCP;

- 4.5.3 Retain legal counsel;
 - 4.5.4 Identify and pursue funding sources;
 - 4.5.5 Set policy;
 - 4.5.6 Maximize the utilization of available resources; and
 - 4.5.7 Oversee all Committee activities.
- 4.6 **Specific Responsibilities of the Board.** The specific responsibilities of the Board shall be as follows:
- 4.6.1 Identify Party and ratepayer needs and requirements;
 - 4.6.2 Formulate and adopt an annual budget prior to the commencement of the fiscal year;
 - 4.6.3 Develop and implement a financing and/or funding plan for ongoing SDCP operations and capital improvements, if applicable;
 - 4.6.4 Retain necessary and sufficient staff and adopt personnel and compensation policies, rules and regulations;
 - 4.6.5 Develop a workforce policy that promotes a local, sustainable, and inclusive workforce;
 - 4.6.6 Adopt policies for procuring electric supply and operational needs such as professional services, equipment and/or supplies;
 - 4.6.7 Develop and implement a Strategic Plan to guide the development, procurement, and integration of renewable energy resources consistent with the intent and priorities identified in this Agreement;
 - 4.6.8 Adopt rules for the disposal of surplus property;
 - 4.6.9 Establish standing and ad hoc committees as necessary to ensure that the interests of SDCP and concerns of each Party are represented to ensure effective operational, technical, and financial functioning of SDCP and monitor the distribution and usage of SDCP programs and benefits throughout SDCP's service territory;
 - 4.6.10 The setting of retail rates for power sold by SDCP and the setting of charges for any other category of retail service provided by SDCP;
 - 4.6.11 To wind up and resolve all obligations of SDCP in the event SDCP is terminated pursuant to Section 8.2;

- 4.6.12 Address any concerns of consumers and customers;
 - 4.6.13 Conduct and oversee SDCP operational audits at intervals not to exceed three years including review of customer access to SDCP programs and benefits, where applicable;
 - 4.6.14 Arrange for an annual independent fiscal audit;
 - 4.6.15 Adopt such bylaws, rules and regulations as are necessary or desirable for the purposes hereof; provided that nothing in the bylaws, rules and regulations shall be inconsistent with this Agreement;
 - 4.6.16 Exercise the Specific Powers identified in Sections 3.2 and 4.6 except as those which the Board may elect to delegate to the Chief Executive Officer; and
 - 4.6.17 Discharge other duties as appropriate and/or required by law.
- 4.7 **Startup Responsibilities.** SDCP shall have the duty to do the following within one year of the Effective Date of the Agreement:
- 4.7.1 Oversee the preparation of, adopt, and update an implementation plan, pursuant to Public Utilities Code Section 366.2(c)(3), for electrical load aggregation;
 - 4.7.2 Prepare a statement of intent, pursuant to Public Utilities Code Section 366.2(c)(4), for electrical load aggregation;
 - 4.7.3 Encourage other qualified public agencies to participate in SDCP;
 - 4.7.4 Obtain financing and/or funding as is necessary to support start up and ongoing working capital;
 - 4.7.5 Evaluate the need for, acquire, and maintain insurance;
 - 4.7.6 Consider and take action on the assumption of City of San Diego consulting and services agreements related to SDCP's start up and implementation activities, subject to the City of San Diego continuing to advance payment, or if another source is secured by the JPA, until such time as an agreement is executed for payment of Initial Costs as specified under Section 7.3.2.
- 4.8 **Meetings and Special Meetings of the Board.** The Board shall hold at least four regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour, and place of each regular meeting shall be fixed annually by resolution of the Board. The location of regular meetings may rotate for the convenience of the Parties, subject to Board

approval and availability of appropriate meeting space. Regular meetings may be adjourned to another meeting time. Special meetings of the Board may be called in accordance with the provisions of Government Code Section 54956. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. Board meeting agendas generally shall be set, in consultation with the Board Chair, by the Chief Executive Officer appointed by the Board pursuant to Section 5.5. The Board itself may add items to the agenda upon majority vote pursuant to Section 4.11.1.

- 4.9 **Brown Act Applicable.** All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950, et seq.).
- 4.10 **Quorum.** A simple majority of the Directors shall constitute a quorum. No actions may be taken by the Board without a quorum of the Directors present. If a Party fails to be represented by a Director(s) or alternate Director in more than one meeting in a 12-month period, the Board may take action by publicly noticing the Party that they are at risk of lack of representation within SDCP.
- 4.11 **Board Voting.**
- 4.11.1 Equal Vote. Once a quorum has been established, in general, except when Special Voting is expressly required pursuant to Section 4.12 hereof, Board action shall require votes of a majority of the total number of the Directors of the Board. All votes taken pursuant to this Section 4.11.1 shall be referred to as an "Equal Vote." The consequence of a tie vote shall generally be "no action" taken. Notwithstanding the foregoing, an "Equal Vote" may be subject to a "Voting Shares Vote" as provided in Section 4.11.2, below.
- 4.11.2 Voting Shares Vote.
- (a) At the same meeting at which an Equal Vote action was taken, three or more Directors shall have the right to request and conduct a "Voting Shares Vote" to reconsider the action approved by the Equal Vote; provided, however, that if there are eight or more Parties to this Agreement, the number of Directors required to request and conduct a Voting Shares Vote to reconsider an Equal Vote action shall be one less than a quorum of the Board.
- (b) Approval of a proposed action by a Voting Shares Vote to reconsider an Equal Vote action shall require the affirmative vote of Directors representing a two-thirds supermajority (66.7%) of the "Voting Shares" cast. The formula and process for allocating Voting Shares is set forth in Section 4.11.3, below. If a Voting Shares Vote for reconsideration fails, the legal effect is to affirm the Equal Vote with respect to which the Voting Shares Vote was

taken. If the Voting Shares Vote succeeds, the legal effect is to nullify the Equal Vote with respect to which the Voting Shares Vote was taken. If the underlying Equal Vote was a tie, the Voting Shares Vote replaces that tie vote. No action may be taken solely by a Voting Shares Vote without first having taken an Equal Vote.

4.11.3 Voting Shares Vote Formula and Process. For the process of a Voting Shares Vote, each Director shall have a Voting Share as determined by the following formula: (Annual Energy Use/Total Annual Energy) multiplied by 100, where:

- (a) “Annual Energy Use” means, (i) with respect to the first year following the Effective Date, the annual electricity usage, expressed in kilowatt hours (“kWh”), within the Party’s respective jurisdiction and (ii) with respect to the period after the first anniversary of the Effective Date, the annual calendar year electricity usage, expressed in kWh, of accounts within a Party’s respective jurisdiction that are served by SDGP; and
- (b) “Total Annual Energy” means the sum of all Parties’ Annual Energy Use. The initial values for Annual Energy Use will be designated in **Exhibit C** and shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year. These adjustments shall be approved by the Board.

The combined voting share of all Directors representing a Party shall be based upon the annual electricity usage within the Party’s jurisdiction. If a Party has two Directors, then the voting shares allocated to that Party shall be equally divided between its two Directors.

The initial voting shares will be set forth in **Exhibit D**. Exhibit D shall be revised no less than annually by March 1 as necessary to account for changes in the Parties’ Annual Energy Use and at such other times as necessary to account for changes in the number of Parties. Exhibit D and adjustments shall be approved by the Board.

Notwithstanding the formula for Voting Shares set forth above, for the purposes of the Voting Shares Vote, no one Party to this Agreement shall have a Director (or Directors, as the case may be) with a Voting Share that exceeds 49%, regardless of the Party’s actual annual electricity usage. If a Party would have a voting share that exceeds 49%, the excess above 49% shall be distributed

among the other Parties in accordance with their relative annual electricity usage, as shown in Exhibit D.

4.12 Special Voting.

4.12.1 Except as provided below, matters that require Special Voting as described in this section shall require 72 hours prior notice to any Brown Act meeting or special meeting.

4.12.2 Two-thirds vote (or such greater vote as required by state law) of the appointed Directors shall be required to take any action on the following:

- (a) Issue bonds or other forms of debt;
- (b) Adding or removing Parties;
- (c) Amend or terminate this Agreement or adopt or amend the bylaws of SDCP. At least 30 days advance notice shall be provided for such actions. SDCP shall also provide prompt written notice to all Parties of the action taken and enclose the adopted or modified documents; and

4.12.3 Three-Fourths Vote shall be required to initiate any action for Eminent Domain

4.12.4 Matters requiring Special Voting under the terms of this Section shall not be subject to Voting Shares Voting pursuant to Section 4.11.2, above.

5. INTERNAL ORGANIZATION

5.1 **Elected and Appointed Officers.** As further provided in this Section 5, the Board shall elect a Chair and Vice Chair from among the Directors and shall appoint a Secretary and a Treasurer as provided in Government Code section 6505.5. No Director may hold more than one such office at any time and elected officers shall represent different Parties of SDCP. Appointed officers shall not be elected officers of the Board.

5.2 **Chair and Vice Chair.** At its first meeting of each calendar year, the Board shall elect a Chair and Vice Chair from among the Directors. The term of office of the Chair and Vice Chair shall continue for one year or until a successor is elected, but there shall be no limit on the number of terms held by either the Chair or Vice Chair. The Chair shall be the presiding officer of all Board meetings, and the Vice Chair shall serve in the absence of the Chair. The Chair shall perform duties as may be imposed by the Board. In the absence of the Chair, the Vice-Chair shall perform all of the Chair's duties. The office of the Chair or Vice Chair shall be declared vacant and a new selection shall be made if: (a) the person serving dies, resigns, or the Party that the person represents removes the person as its

representative on the Board, or (b) the Party that he or she represents withdraws from SDCP pursuant to the provisions of this Agreement. Upon a vacancy, the position shall be filled at the next regular meeting of the Board held after such vacancy occurs or as soon as practicable thereafter. Succeeding officers shall perform the duties normal to said offices.

- 5.3 **Secretary.** The Board shall appoint a qualified person who is not on the Board to serve as Secretary. The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other office records of SDCP. If the appointed Secretary is an employee of any Party, such Party shall be entitled to reimbursement for any documented out of pocket costs it incurs in connection with such employee's service as Secretary of SDCP, and full cost recovery for any documented hours of service provided by such employee during such Party's normal working hours.
- 5.4 **Treasurer/Chief Financial Officer and Auditor.** The Board of Directors shall appoint a Treasurer who shall function as the combined offices of Treasurer and Auditor and shall strictly comply with the statutes related to the duties and responsibilities specified in Section 6505.5 of the Act. The Treasurer for SDCP shall be the depository and have custody of all money of SDCP from whatever source and shall draw all warrants and pay demands against SDCP as approved by the Board. The Treasurer shall cause an independent audit(s) of the finances of SDCP to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any qualified person or entity as the law allows at the time. The duties and obligations of the Treasurer are further specified in Section 7. The Treasurer shall serve at the pleasure of the Board. If the appointed Treasurer is an employee of any Party, such Party shall be entitled to reimbursement for any documented out of pocket costs it incurs in connection with such employee's service as Treasurer of SDCP, and full cost recovery for any documented hours of service provided by such employee during such Party's normal working hours.
- 5.5 **Chief Executive Officer.** The Board shall appoint a Chief Executive Officer for SDCP, who shall be responsible for the day-to-day operation and management of SDCP and the CCA Program. The Board shall appoint a qualified person, hired through a transparent, competitive process, to act as the Chief Executive Officer; he or she may not be an elected member of the Board or otherwise representing any Party to SDCP. The Chief Executive Officer may exercise all powers of SDCP, except those powers specifically reserved to the Board including but not limited to those set forth in Section 4.6 (Specific Responsibilities of the Board) of this Agreement or SDCP's bylaws, or those powers which by law must be exercised by the Board. The Chief Executive Officer may enter into and execute power purchase agreements and other contracts, in accordance with criteria and policies established by the Board.

- 5.6 **General Counsel.** 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.
- 5.7 **Bonding of Persons Having Access to Property.** Pursuant to the Act, the Board shall designate the public officer or officers or person or persons who have charge of, handle, or have access to any property of SDCP exceeding a value as established by the Board, and shall require such public officer or officers or person or persons to file an official bond in an amount to be fixed by the Board.
- 5.8 **Other Employees/Agents.** The Board shall have the power by resolution to hire employees or appoint or retain such other agents, including officers, loan-out employees, or independent contractors, as may be necessary or desirable to carry-out the purpose of this Agreement, pursuant to terms and conditions adopted by the Board.
- 5.9 **Privileges and Immunities from Liability.** All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activities of officers, agents or employees of a public agency when performing their respective functions shall apply to the officers, agents or employees of SDCP to the same degree and extent while engaged in the performance of any of the functions and other duties of such officers, agents or employees under this Agreement. None of the officers, agents or employees directly employed by the Board shall be deemed, by reason of their employment by SDCP to be employed by the Parties or by reason of their employment by SDCP, to be subject to any of the requirements of the Parties.
- 5.10 **Commissions, Boards and Committees.** The Board may establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, related energy programs, and the provisions of this Agreement. To the extent possible, the commissions, boards, and committees should have equal representation from each Party. The Board may establish criteria to qualify for appointment on said commissions, boards, and committees. The Board may establish rules, regulations, policies, or procedures to govern any such commissions, boards, or committees and shall determine whether members shall be compensated or entitled to reimbursement for expenses.
- 5.10.1 **Executive Committee.** The Board may establish an executive committee consisting of a subset of its Directors. The Board may delegate to the Executive Committee such authority as the Board might determine appropriate to serve as a liaison between the Board and the Chief Executive Officer and to make recommendations to the Board regarding the operations of SDCP. Notwithstanding the foregoing, the Board may not delegate authority regarding essential Board functions, including but

not limited to, approving the fiscal year budget or hiring or firing the Chief Executive Officer, and other functions as provided in SDCP bylaws or policies. Further, the Board may not delegate to the Executive Committee, or any other committee, the Board's authority under Section 3.2.12 to adopt and amend SDCP policies and procedures.

5.10.2 Finance and Risk Management Committee. The Board shall establish a finance and risk management committee consisting of a subset of its primary or alternate Directors. The primary purpose of the Finance and Risk Management Committee is to review and recommend to the Board:

- (a) A funding plan;
- (b) A fiscal year budget; and
- (c) Financial policies and procedures to ensure equitable contributions by Parties; and

The Finance and Risk Management Committee may have such other responsibilities as may be approved by the Board, including but not limited to advising the Chief Executive Officer on fiscal and risk management policies and procedures, rules and regulations governing investment of surplus funds, audits to achieve best practices in corporate governance and selection and designation of financial institutions for deposit of SDCP funds, and credit/depository matters.

5.10.3 Community Advisory Committee. The Board shall establish a Community Advisory Committee comprised of non-Board members. The primary purpose of the Community Advisory Committee shall be to advise the Board of Directors and provide for a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of SDCP. The Community Advisory Committee is advisory only, and shall not have decision-making authority, nor receive any delegation of authority from the Board of Directors. Each Party may nominate a committee member(s) and the Board shall determine the final selection of committee members, who should represent a diverse cross-section of interests, skills sets and geographic regions.

5.10.4 Technical Advisory Committee. The Board may establish a Technical Advisory Committee comprised of non-Board members. The primary purpose of the Technical Advisory Committee shall be to advise the Board of Directors and provide SDCP with technical support and engagement in the energy-related operations of SDCP, supplementing the expertise of SDCP staff, independent contractors, and consultants. Each Party may nominate a committee member(s) and the Board shall determine the final selection of committee members, who should have significant expertise in

electric markets, programs, procurement, regulatory and legislative engagement, and/or energy law.

5.10.5 Meetings of the Advisory Committees. All meetings of the committees shall be held in accordance with the Brown Act. For the purposes of convening meetings and conducting business, unless otherwise provided in the bylaws, a majority of the members of the committee shall constitute a quorum for the transaction of business, except that less than a quorum or the secretary of each committee may adjourn meetings from time-to-time. As soon as practicable, but no later than the time of posting, the Secretary of the committee shall provide notice and the agenda to each Party, Director(s), and Alternate Director(s).

5.10.6 Officers of Advisory Committees. Unless otherwise determined by the Board, each Committee shall choose its officers, comprised of a Chair, a Vice Chair, and a Secretary.

6. IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

6.1 Preliminary Implementation of the CCA Program.

6.1.1 Enabling Ordinance. In addition to the execution of this Agreement, each Party shall adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(12) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in SDCP.

6.1.2 Implementation Plan. SDCP shall cause to be prepared and secure Board approval of an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations, and consistent with the terms of this Agreement, as soon after the Effective Date as reasonably practicable.

6.2 **SDCP Documents.** The Parties acknowledge and agree that the affairs of SDCP will be implemented through various documents duly adopted by the Board through Board resolution or minute action, including but not necessarily limited to operational procedures and policies, the annual budget, and specific plans such as a local renewable energy development and integration plan and other policies defined as SDCP Documents by this Agreement. All such SDCP Documents shall be consistent with and designed to advance the goals and objectives of SDCP as expressed in this Agreement. The Parties agree to abide by and comply with the terms and conditions of all such SDCP Documents that may be adopted by the Board, subject to the Parties' right to withdraw from SDCP as described in Section 8 (Withdrawal and Termination) of this Agreement.

6.3 **Integrated Resource Plan and Regulatory Compliance.** SDCP shall cause to be prepared an Integrated Resource Plan in accordance with California Public Utilities Commission regulations, and consistent with the terms of this

Agreement, that will ensure the long-term development and administration of a variety of energy programs that promote local renewable resources, conservation, demand response, and energy efficiency, while maintaining compliance with other regulatory requirements including the State Renewables Portfolio Standard (RPS) and customer rate competitiveness. SDCP shall prioritize the development of cost competitive clean energy projects in San Diego and adjacent counties.

- 6.4 **Renewables Portfolio Standards.** SDCP shall provide its customers energy primarily from Category 1 eligible renewable resources, as defined under the California RPS and consistent with the goals of the CCA Program. SDCP shall avoid the procurement of energy from Category 2 or 3 eligible renewable resources (unbundled Renewable Energy Credits or RECs) to the extent feasible. SDCP's ultimate objective shall be to achieve—and sustain—a renewable energy portfolio with 100 percent renewable energy availability and usage, at competitive rates, within SDCP service territory by no later than 2035, and then beyond.

7. **FINANCIAL PROVISIONS**

- 7.1 **Fiscal Year.** SDCP's fiscal year shall be 12 months commencing July 1 and ending June 30. The fiscal year may be changed by Board resolution.

7.2 **Depository.**

- 7.2.1 All funds of SDCP shall be held in separate accounts in the name of SDCP and not commingled with funds of any Party or any other person or entity.
- 7.2.2 All funds of SDCP shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of SDCP shall be open to inspection and duplication by the Parties at all reasonable times. Annual financial statements shall be prepared in accordance with Generally Accepted Accounting Principles of the United States of America within 6 months of the close of the fiscal year. The Board shall contract with a certified public accountant to make an annual audit of the financial statements of SDCP, which shall be conducted in accordance with the requirements of Section 6505 of the Act.
- 7.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its policies and procedures.

7.3 **Budget and Recovery Costs.**

- 7.3.1 **Budget.** The initial budget shall be approved by the Board. The Board may revise the budget from time to time as may be reasonably necessary to address contingencies and unexpected expenses. All subsequent budgets of SDCP shall be prepared and approved by the Board in

accordance with its fiscal management policies that should include a deadline for approval.

7.3.2 Funding of Initial Costs.

- (a) The City of San Diego shall fund the Initial Costs of establishing SDCP and implementing its CCA Program. In the event that the CCA Program becomes operational, the City of San Diego will be reimbursed for its Initial Costs on the terms set forth in this Section. The City shall first submit to the Founding Members a description of the types of costs, cost estimates, and interest for which it expects reimbursement. Reimbursable costs shall include, but not limited to, repayment of hard costs associated with CCA vendor contracts and SDCP formation, reimbursement for the portion of staff costs associated with managing SDCP and program formation and other out-of-pocket expenses directly attributable to the implementation of CCA through SDCP. The City will meet and confer with Founding Members in the development of its proposal for reimbursement to SDCP. The amount and the terms for City reimbursement shall be subject to the approval of SDCP Board. The SDCP Board may establish a reasonable time period over which such Initial Costs are recovered once SDCP revenues commence. In the event that the CCA Program does not become operational, to the extent SDCP funds are available the City of San Diego may be reimbursed in accordance with section 8.6 of this Agreement.
- (b) SDCP shall also reimburse Founding Members for their Initial Costs in supporting the implementation of SDCP pursuant to the execution of an agreement specifying the services provided and their related costs. SDCP may establish reasonable costs and a reasonable time period over which such costs are recovered once SDCP revenues commence. SDCP shall not provide for staff time costs or on-going cost reimbursement to Parties once SDCP becomes fully operational unless a specific Agreement between SDCP and the Party for specified services not otherwise provided by SDCP staff has been approved by the Board.

7.3.3 Program Costs. The Parties desire that, to the extent reasonably practicable, all costs incurred by SDCP that are directly or indirectly attributable to the provision of electric services under the CCA Program, including the establishment and maintenance of various reserve and performance funds, shall be recovered through appropriate charges to CCA customers receiving such electric services.

- 7.3.4 No Requirement for Contributions or Payments. Parties are not required under this Agreement to make any financial contributions or payments to SDCP, and SDCP shall have no right to require such a contribution or payment unless expressly set forth herein (for example, as provided in Section 2.4.3, with respect to Additional Members and provided in Section 8.1, with respect to Withdrawal), or except as otherwise required by law.

Notwithstanding the foregoing, a Party may volunteer to provide, or negotiate terms with SDCP to provide the following:

- (a) contributions from its treasury for the purposes set forth in this Agreement;
- (b) payments of public funds to defray the cost of the purposes of the Agreement and SDCP;
- (c) advances of public funds for such purposes, such advances to be repaid as provided by written agreement; or
- (d) its personnel, equipment or property in lieu of other contributions or advances.

Any agreement with SDCP to provide any of the above-referenced contributions or payments shall require a Special Vote of the Board pursuant to Section 4.12.2.

No Party shall be required, by or for the benefit of SDCP, to adopt any local tax, assessment, fee or charge under any circumstances.

- 7.4 **Accounts and Reports.** The Treasurer shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any trust agreement entered into with respect to the proceeds of any bonds issued by SDCP. The books and records of SDCP in the hands of the Treasurer shall be open to inspection and duplication at all reasonable times by duly appointed representatives of the Parties. The Treasurer, within 180 days after the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year to the Parties. The Treasurer shall cooperate with all regular audits required by Section 4.6.11 and 4.6.12.
- 7.5 **Funds.** The Treasurer shall receive, have custody of and/or disburse SDCP funds in accordance with the laws applicable to public agencies and generally accepted accounting practices, and shall make the disbursements required by this Agreement in order to carry out any of the purposes of this Agreement.

8. WITHDRAWAL AND TERMINATION

8.1 Withdrawal

- 8.1.1 Withdrawal by Parties. Any Party may withdraw its membership in SDCP, effective as of the beginning of SDCP's fiscal year, by giving no less than 180 days advance written notice of its election to do so, which notice shall be given to SDCP and each Party. Withdrawal of a Party shall require an affirmative vote of the Party's Governing Body.
- 8.1.2 Amendment. Notwithstanding Section 8.1.1 (Withdrawal by Parties) of this Agreement, a Party may withdraw its membership in SDCP upon approval and execution of an amendment to this Agreement provided that the requirements of this Section 8.1.2 are strictly followed. A Party shall be deemed to have withdrawn its membership in SDCP effective 180 days after the Board approves an amendment to this Agreement if the Director representing such Party has provided notice to the other Directors immediately preceding the Board's vote of the Party's intention to withdraw its membership in SDCP should the amendment be approved by the Board.
- 8.1.3 Continuing Liability; Further Assurances. A Party that withdraws its membership in SDCP may be subject to certain continuing liabilities, as described in Section 8.5 (Continuing Liability; Refund) of this Agreement, including, but not limited to, power purchase agreements and other SDCP contracts and operational obligations. The withdrawing Party and SDCP shall execute and deliver all further instruments and documents and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from membership in SDCP. The Board shall also consider, pursuant to Section 3.2.12, adoption of a policy that allows a withdrawing Party to negotiate assignment to the Party of costs of electric power or other resources procured on behalf of its customers by SDCP upon its withdrawal. SDCP's policies shall prescribe the rights if any of a withdrawn Party to continue to participate in those Board discussions and decisions affecting customers of the CCA Program that reside or do business within the jurisdiction of the Party. In the implementation of this Section 8.1.3, the Parties intend, to the maximum extent possible, without compromising the viability of ongoing SDCP operations, that any claims, demands, damages, or liabilities covered hereunder, be funded from the rates paid by CCA Program customers located within the service territory of the withdrawing Party, and not from the general fund of the withdrawing Party itself.

- 8.2 **Termination of CCA Program.** Nothing contained in Section 6 or elsewhere in this Agreement shall be construed to limit the discretion of SDCP to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.
- 8.3 **Involuntary Termination.** This Agreement may be terminated with respect to a Party for material non-compliance with provisions of this Agreement or SDCP documents upon a two-thirds vote of the Board in which the minimum Equal Vote or Voting Shares Vote, as applicable in Section 4.11 (Board Voting) of this Agreement, shall be no less than two-thirds vote excluding the vote and voting shares of the Party subject to possible termination. Prior to any vote to terminate this Agreement with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or SDCP Documents that the Party has allegedly violated. The Party subject to possible termination shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its membership in SDCP terminated may be subject to certain continuing liabilities, as described in Section 8.5 (Continuing Liability; Refund) of this Agreement.
- 8.4 **Mutual Termination.** This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its membership in SDCP, and thus terminate this Agreement with respect to such withdrawing Party, as described in Section 8.1 (Withdrawal) of this Agreement.
- 8.5 **Continuing Liability; Refund.** Upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims, demands, damages, or liabilities arising from the Party's membership in SDCP through the effective date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any claims, demands, damages, or liabilities commencing or arising after the date of the Party's withdrawal or involuntary termination. In addition, such Party also shall be responsible for (a) any damages, losses, or costs incurred by SDCP which result directly from the Party's withdrawal or termination, including but not limited to costs arising from the resale of capacity, electricity, or any attribute thereof no longer needed to serve such Party's load; and (b) any costs or obligations associated with the Party's customer participation in any program in accordance with the program's terms, provided such costs or obligations were incurred prior to the withdrawal of the Party. The withdrawing Party agrees to pay any such deposit determined by SDCP to cover the Party's liability for the operational and contract costs described above. Any amount of the Party's funds held on deposit with SDCP above that which is required to pay any liabilities or obligations shall be returned to the Party. In the implementation

of this Section 8.5, the Parties intend, to the maximum extent possible, without compromising the viability of ongoing SDCP operations, that any claims, demands, damages, or liabilities covered hereunder, be funded from the rates paid by CCA Program customers located within the service territory of the withdrawing Party, and not from the general fund of the withdrawing Party itself.

- 8.6 **Disposition of SDCP Assets.** Upon termination of this Agreement and dissolution of SDCP by all Parties, and after payment of all obligations of SDCP, the Board

8.6.1 May sell or liquidate SDCP property; and

8.6.2 Shall distribute assets to Parties in proportion to the contributions made by the existing Parties.

Any assets provided by a Party to SDCP shall remain the asset of that Party and shall not be subject to distribution under this section.

9. **MISCELLANEOUS PROVISIONS**

- 9.1 **Dispute Resolution.** The Parties and SDCP shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Before exercising any remedy provided by law, a Party or the Parties and SDCP shall engage in nonbinding mediation in the manner agreed upon by the Party or Parties and SDCP. The Parties agree that each Party may specifically enforce this section. In the event that nonbinding mediation is not initiated or does not result in the settlement of a dispute within 60 days after the demand for mediation is made, any Party and SDCP may pursue any remedies provided by law.

- 9.2 **Liability of Directors, Officers, and Employees.** The Directors, officers, and employees of SDCP shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. SDCP shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Section 995 et seq. Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, SDCP, or its Directors, officers, or employees.

- 9.3 **Indemnification of Parties.** SDCP shall acquire such insurance coverage as is necessary to protect the interests of SDCP, the Parties and the public. SDCP shall defend, indemnify and hold harmless the Parties and each of their respective governing board members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising

directly or indirectly from the conduct, activities, operations, acts and omissions of SDCP.

- 9.4 **Notices.** Any notice required or permitted to be made hereunder shall be in writing and shall be delivered in the manner prescribed herein at the principal place of business of each Party. The Parties may give notice by (1) personal delivery; (2) e-mail; (3) U.S. Mail, first class postage prepaid, or a faster delivery method; or (3) by any other method deemed appropriate by the Board.

Upon providing written notice to all Parties, any Party may change the designated address or e-mail for receiving notice.

All written notices or correspondence sent in the described manner will be deemed given to a party on whichever date occurs earliest: (1) the date of personal delivery; (2) the third business day following deposit in the U.S. mail, when sent by "first class" mail; or (3) the date of transmission, when sent by e-mail or facsimile.

- 9.5 **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors of each Party.

- 9.6 **Assignment.** Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this section shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties. This section does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to SDCP, or the disposition of the proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of SDCP or the Parties under this Agreement.

- 9.7 **Severability.** If any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement were adjudged invalid or void by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and conditions of this Agreement shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted by law.

- 9.8 **Governing Law.** This Agreement is made and to be performed in the State of California, and as such California substantive and procedural law shall apply.

- 9.9 **Headings.** The section headings herein are for convenience only and are not to be construed as modifying or governing the language of this Agreement.

- 9.10 **Counterparts.** This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same

force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

APPROVAL OF JOINT POWERS AGREEMENT AS AMENDED AND RESTATED

By Resolution ____ of the Board of Directors of San Diego Community Power, this Joint Powers Agreement was amended and restated in accordance with Section 4.12.2(c) of the Agreement, effective as of _____.

By: _____
Chair, Board of Directors
San Diego Community Power

ATTEST:

By: _____
Secretary, Board of Directors
San Diego Community Power

APPROVED AS TO FORM:

By: _____
General Counsel
San Diego Community Power

Exhibit A: Definitions

“AB 117” means Assembly Bill 117 (Stat. 2002, Ch. 838, codified at Public Utilities Code Section 366.2), which created Community Choice Aggregation.

“Act” means the Joint Exercise of Powers Act of the State of California (Chapter 5, Division 7, Title 1 of the Government Code commencing with Section 6500).

“Agreement” means this Joint Powers Agreement, as amended from time to time.

“Board” means the Board of Directors of SDCP.

“Community Choice Aggregation” or “CCA” means an electric service option available to cities, counties, and other public agencies pursuant to Public Utilities Code Section 366.2.

“CCA Program” means SDCP’s program relating to CCA that is principally described in Section 2.3 (Purpose) of this Agreement.

“Days” shall mean calendar days unless otherwise specified by this Agreement.

“Director” means a member of the Board representing a Party, including up to two alternate Directors appointed in accordance with Sections 4.1 (Board of Directors) and 4.2 (Appointment and Removal of Directors) of this Agreement.

“Effective Date” means October 1, 2019, as further described in Section 2.1 (Effective Date and Term) of this Agreement.

“Founding Member” means any jurisdiction that joins with the City of San Diego to form SDCP in 2019, as identified in Exhibit B. Founding members shall not incur any expenses related to their membership in SDCP or its operational implementation.

“Governing Body” means: for the County of San Diego, its Board of Supervisors; for any city other than San Diego, its City Council; for San Diego, the Mayor and the City Council; and, for any other public agency, the equivalent policy making body that exercises ultimate decision-making authority over such agency.

“Initial Costs” means implementation costs advanced by the City of San Diego and other Founding Members in support of the formation of SDCP, which are (a) directly related to the establishment of SDCP and its CCA program, and (b) incurred by SDCP or its Members relating to the initial operation of SDCP, such as the hiring of the executive and operations staff, any required accounting, administrative, technical and legal services in support of SDCP’s initial formation activities or in support of the negotiation, preparation and approval of power purchase agreements. Initial Costs do not include costs associated with the investigation of the CCA model, attendance at routine planning meetings, or a Party’s pre-formation reports related to their decision to pursue CCA or join SDCP. The SDCP Board shall determine the repayment timing and termination date for the Initial Costs.

“Investor Owned Utilities” means a privately-owned electric utility whose stock is publicly traded. It is rate regulated and authorized to achieve an allowed rate of return.

“Parties” means, collectively, the signatories to this Agreement that have satisfied the conditions as defined above in “Founding Members” or in Section 2.4 (Addition of Parties) of this Agreement, such that they are considered members of SDCP.

“Party” means, singularly, a signatory to this Agreement that has satisfied the conditions as defined above in “Founding Members” or in Section 2.4 (Addition of Parties) of this Agreement, such that it is considered a member of SDCP.

“Public Agency” as defined in the Act includes, but is not limited to, the federal government or any federal department or agency, this state, another state or any state department or agency, a county, a county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, a federally recognized Indian tribe, or any joint powers authority formed pursuant to the Act.

“SDCP” means San Diego Community Power.

“SDCP Document(s)” means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions and activities of SDCP, including but not limited to the Operating Policies and Procedures, the annual budget, and plans and policies.

Exhibit B: List of Founding Members

City of San Diego

City of Chula Vista

City of Encinitas

City of La Mesa

City of Imperial Beach

Exhibit C: Annual Energy Use by Jurisdiction

Party	MWh
San Diego	6,300,000*
Chula Vista	702,000*
Encinitas	231,000**
La Mesa	217,000*
Imperial Beach	108,500

* 2018 data provided by SDG&E

**2017 data provided by SDG&E

Exhibit D: Voting Shares of Founding Members

Party	MWh	Voting Share
San Diego	6,300,000*	49.00%
Chula Vista	702,000*	28.45%
Encinitas	231,000**	9.36%
La Mesa	217,000*	8.79%
Imperial Beach	108,500	4.40%
Total	7,558,500	100.00%

* 2018 data provided by SDG&E

**2017 data provided by SDG&E

Exhibit E: Signature Pages of Founding Members on Original Agreement

Exhibit F: Signature Pages of Additional Parties

Signature pages of additional Parties shall be attached to this Exhibit in accordance with the Agreement and shall be in substantially the following form:

SIGNATURE PAGE OF THE [NEW MEMBER] AGREEING TO BECOME A PARTY TO THE SAN DIEGO COMMUNITY POWER JOINT POWERS AGREEMENT

Pursuant to [resolution, motion, minute order], the [New Member] hereby agrees to become a Party to the San Diego Community Power Joint Powers Agreement dated October 1, 2019, as amended and restated on [insert] (previously known as the “San Diego Regional Community Choice Energy Authority Joint Powers Agreement”), pursuant to Section 2.4 of the Agreement.

[NEW MEMBER]

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

Note: The addition of the above-named entity as a Party to the San Diego Community Power Joint Powers Agreement is subject to satisfaction of the conditions set forth in Section 2.4 of the Agreement and such other reasonable conditions as may be adopted by the San Diego Community Power Board of Directors.

**BYLAWS OF
SAN DIEGO COMMUNITY POWER**

**ARTICLE I
FORMATION**

San Diego Community Power (“**SDCP**”) was established on October 1, 2019, pursuant to the San Diego Community Power Joint Powers Agreement,¹ as may be amended from time to time (“**JPA Agreement**”). The members of SDCP may be referred to herein individually as a “Member Agency” or collectively as the “Member Agencies.”

**ARTICLE II
GENERAL PROVISIONS**

Section 1. Purpose of SDCP

SDCP was established to procure and/or develop electrical energy for customers in participating jurisdictions, address climate change by reducing energy-related greenhouse gas emissions, promote electrical rate price stability, and foster local economic benefits such as job creation, local energy programs and local power development, and to exercise all other powers common to its Member Agencies that are necessary or appropriate to the accomplishment of these and other purposes, as further specified in the JPA Agreement.

Section 2. Purpose of Bylaws

The JPA Agreement authorizes the Board of Directors to adopt such bylaws, rules and regulations as are necessary or desirable to accomplish the purposes of the JPA Agreement; provided, however, that nothing in the bylaws, rules or regulations shall be inconsistent with the JPA Agreement. By approving these Bylaws, the Board intends to adopt additional procedures concerning basic governance, internal organization, Board committees, and other matters addressed in these Bylaws.

Section 3. Definitions

Unless specifically defined in these Bylaws, all defined terms shall have the same meaning as ascribed to them in the JPA Agreement.

Section 4. Precedence

In the event of any conflict between these Bylaws and the JPA Agreement, the JPA Agreement shall control and these Bylaws shall be amended or clarified to eliminate such conflict.

¹ SDCP was originally established and known as the San Diego Regional Community Choice Energy Authority. The agency’s name and the title of the JPA Agreement were changed by the First Amendment to the JPA Agreement, dated November 21, 2019.

ARTICLE III
BOARD OF DIRECTORS

Section 1. Board of Directors

Having at least five Member Agencies, SDCP is governed by a Board of Directors ("**Board**") composed of one representative of each of the Member Agencies. The Board shall have all the powers and functions set forth in Sections 3 and 4 of the JPA Agreement. The governing body of each Member Agency shall appoint and designate in writing one regular Director, who shall be authorized to act for and on behalf of such Member Agency. The regular Director shall be a member of the governing body of the appointing Member Agency.

Section 2. Alternates

The governing body of each Member Agency shall also appoint and designate in writing one alternate Director who may vote on matters when the regular Director is absent from a meeting. The alternate is not required to be a member of the governing body of the appointing Member Agency. The alternate Director shall have all the rights and responsibilities of the primary Director when serving in his or her absence; provided, however, that alternate Directors who are not members of the governing body of the appointing Member Agency shall not attend closed session meetings pursuant to Article V, Section 4 of these Bylaws and applicable law. As further described in Article VIII, Section 4, alternate Directors may serve on committees, vote on matters in committee, chair committees, and fully participate in discussion and debate during meetings.

Section 3. Resignation

A Director may resign at any time by giving written notice to the Board Secretary. The notice of resignation may specify a date on which the resignation will become effective.

Section 4. Vacancy

If at any time a vacancy occurs on the Board, for whatever reason, a replacement shall be appointed by the governing body of the subject Member Agency.

Section 5. Compensation

The Board may adopt by resolution a policy relating to compensation of its Directors.

ARTICLE IV
BOARD OFFICERS AND TERMS OF OFFICE

Section 1. Chair

For each calendar year, the Board shall elect a Chair from among the Directors. The Chair shall be the presiding officer of all Board meetings and perform other duties as may be imposed by the Board. In the event of a vacancy, the position shall be filled at the next regular meeting of the Board held after such vacancy occurs or as soon as practicable thereafter.

Section 2. Vice Chair

For each calendar year, the Board shall elect a Vice Chair from among the Directors. The Vice Chair shall preside in the absence of the Chair and perform other duties of the Chair in his or her absence. In the event of a vacancy, the position shall be filled at the next regular meeting of the Board held after such vacancy occurs or as soon as practicable thereafter.

Section 3. Election of Chair and Vice Chair

At its first meeting of each calendar year or as soon thereafter as possible, the Board shall elect the Chair and Vice Chair of SDCP.

Section 4. Terms of Office

The terms of office of the Chair and Vice Chair shall continue for one year or until a successor is elected. There shall be no limit on the number of terms.

**ARTICLE V
MEETINGS**

Section 1. Regular Meetings

The Board shall hold at least four regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour, and place of each regular meeting shall be fixed annually by resolution of the Board.

Section 2. Special and Emergency Meetings

Special and emergency meetings of the Board may be called in accordance with the provisions of Government Code sections 54956 and 54956.5, respectively.

Section 3. Open Meetings

All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code § 54950 *et seq.*). Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law.

Section 4. Attendance of Alternates in Closed Session

Pursuant to Government Code section 54956.96(a)(2), the SDCP Board hereby authorizes an alternate Director who is also a member of the governing body of a Member Agency, and is attending a properly noticed SDCP Board meeting in the absence of the regular Director, to attend a closed session held during such meeting. Pursuant to section 54956.96(a)(2), alternate Directors who are not a member of the governing body of a Member Agency may not attend a closed session meeting of SDCP.

Section 5. Preparation of Agendas

The Chief Executive Officer or a designee shall prepare the agenda for each Board meeting. Agenda items will be generated by the need to conduct SDCP's business in a timely manner. The Chief Executive Officer shall review with the Board Chair, or the Vice-Chair in the absence of the Chair, the agenda for regular meetings of the Board.

Section 6. Addition of Agenda Items Before a Meeting

Board Members may add a “**Board Member Initiated Agenda Item**” to a future meeting agenda. Board Member Initiated Items are prepared by the requesting Board Member and require no staff time. Board Member Initiated Items must be submitted to the Chief Executive Officer at least ten (10) days prior to the next Board meeting.

In addition, items may be added to a future Board meeting agenda in the following ways:

- A. The Chair provides an express oral direction to the Chief Executive Officer during a Board meeting. If a Board Member disagrees with the Chair’s direction, the Board Member may make a motion regarding the addition of the item without discussion of the substance of the item.
- B. For items requiring staff time, an item shall be added by motion without discussion of the substance of the item.
- C. Requests from members of the audience, after being authorized to speak, may be added to a future agenda by a Board Member as a Board Member Initiated Agenda Item, as discussed above. If the item requires staff time, the item may be added only by motion without discussion of the substance of the item.
- D. The Chair or a majority of the Board may refer items to a committee for further review.

Section 7. Modification of Agenda Order; Addition of Items During a Meeting

The order of items on the agenda may be modified by the Chair if there is no objection, or by a motion and majority vote of the Board. No action or discussion may be undertaken on any item not appearing on the posted agenda, except as allowed under the Brown Act.

Section 8. Consent Calendar

The consent calendar shall consist of items which appear to be routine or ministerial in nature on which no Board discussion will be required. Before adopting the consent calendar, the Chair will ask Board Members whether anyone wishes to move a matter from the consent calendar to the regular agenda. Members of the public may also request to move a matter from the consent calendar to the regular agenda. The Board will then proceed with consideration of the remaining consent calendar. The consent calendar will be acted upon in one motion without discussion. Items pulled from the consent calendar will be considered immediately following adoption of the remaining consent calendar, and staff reports will only be given if requested by the Board Member who pulled them.

Section 9. Public Comments

Agendas of regular meetings shall provide an opportunity for members of the public to address the Board on any item within the jurisdiction of SDCP which are not on the agenda. Generally, speakers shall be limited to three (3) minutes each, with 30 minutes being provided for non-agenda public comments. If the number of speakers is estimated to exceed the 30-minute period, the Chair may, in his or her discretion, reduce the time allotted to each speaker, extend

the period for non-agenda public comment, or continue the remaining comments to the end of the agenda. For public comments on agenda items, the Chair may reduce the time allotted to each speaker in his or her discretion.

Section 10. Order and Procedure at Meetings

All meetings of the Board shall be conducted in an orderly manner designed to expedite the business of the Board in accordance with applicable law, the JPA Agreement, and these Bylaws. Except as otherwise provided in these Bylaws, Robert's Rules of Order will be used as a guide to resolve questions of parliamentary procedures. The General Counsel shall serve as the Parliamentarian.

Section 11. Rules of Debate and Decorum

Debate upon all matters pending before the Board shall be under the supervision of the Chair and conducted in such a manner as to expedite the business of the Board. Every Board Member desiring to speak shall so indicate by using the "request to speak" button, if available, or otherwise address the Chair. Upon recognition by the Chair, the Board Member shall confine remarks to the item under consideration. A Board Member, once recognized, shall not be interrupted when speaking unless it is to call the Board Member to order. If a Board Member while speaking is called to order, the Board Member shall cease speaking until the question of order is determined.

ARTICLE VI
QUORUM AND VOTING

Section 1. Quorum

A simple majority of the Directors shall constitute a quorum. No actions may be taken by the Board without a quorum of the Directors present. If a Member Agency fails to be represented by a Director or alternate Director in more than one meeting in a 12-month period, the Board may take action by publicly noticing the Member Agency that they are at risk of lack of representation within SDCP.

Section 2. Equal Vote

In general, except when Special Voting is expressly required, Board action shall require votes of a majority of the total number of the Directors of the Board. All votes taken pursuant to this provision shall be referred to as an "**Equal Vote.**" The consequence of a tie vote shall generally be "no action" taken. Notwithstanding the foregoing, an Equal Vote may be subject to a "**Voting Shares Vote.**"

Section 3. Voting Shares Vote

- A. At the same meeting at which an Equal Vote action was taken, three or more Directors shall have the right to request and have conducted a "Voting Shares Vote" to reconsider the action approved by the Equal Vote; provided, however, that if there are eight or more Parties to the JPA Agreement, the number of Directors required to request and conduct

a Voting Shares Vote to reconsider an Equal Vote action shall be one less than a quorum of the Board. Approval of a proposed action by a Voting Shares Vote to reconsider an Equal Vote action shall require the affirmative vote of Directors representing a two-thirds supermajority (66.7%) of the "Voting Shares" cast. The formula and process for allocating Voting Shares is set forth in the JPA Agreement. If a Voting Shares Vote for reconsideration fails, the legal effect is to affirm the Equal Vote with respect to which the Voting Shares Vote was taken. If the Voting Shares Vote succeeds, the legal effect is to nullify the Equal Vote with respect to which the Voting Shares Vote was taken. If the underlying Equal Vote was a tie, the Voting Shares Vote replaces that tie vote. No action may be taken solely by a Voting Shares Vote without first having taken an Equal Vote.

- B. The formula for a Voting Shares Vote shall be determined pursuant to Section 4.11.3 of the JPA Agreement.

Section 4. Special Voting

Except as provided below, matters that require Special Voting shall require 72 hours' notice prior to any regular or special meeting.

- A. A two-thirds vote of the appointed Directors (or such greater vote as required by State law) shall be required to take any of the following actions:
1. Issue bonds or other forms of debt;
 2. Adding or removing Member Agencies;
 3. Amending or terminating the JPA Agreement or adopting or amending these Bylaws. At least 30 days' advance notice shall be provided to each Member Agency as provided in Article X of these Bylaws. The Authority shall also provide prompt written notice to all Member Agencies of the action taken and enclose the adopted or modified document(s); and
- B. A three-fourths vote shall be required to initiate any action for eminent domain.
- C. Matters requiring Special Voting shall not be subject to Voting Shares Voting.

ARTICLE VII

**POLICY REGARDING CONFIDENTIAL INFORMATION
DISCLOSED DURING CLOSED SESSIONS**

Information obtained during closed sessions of the Board shall be confidential. Notwithstanding, under certain circumstances, it may be necessary and appropriate for Directors to divulge certain confidential information obtained in closed sessions to representatives of their Member Agencies as authorized by law. Therefore, these Bylaws adopt the policy set forth in California Government Code section 54956.96, which authorizes the disclosure of confidential closed session information that has direct financial or liability implications for that Member Agency as follows:

- A. A Director or alternate Director who is also a member of the governing body of a Member Agency may disclose information obtained in an SDCP closed session that has direct financial or liability implications for that Member Agency to the following individuals:
 - 1. Legal counsel of that Member Agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that Member Agency; and
 - 2. Other members of the governing body of the Member Agency present in a closed session of that Member Agency.
- B. The governing body of the Member Agency may, upon the advice of its legal counsel, conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of SDCP pursuant to this Article.

ARTICLE VIII
BOARD COMMITTEES

Section 1. Committees

As further provided in the JPA Agreement, the Board may establish advisory commissions, boards, and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, related to energy programs, and the provisions of the JPA Agreement.

The Finance and Risk Management Committee is a “Standing Committee” of the Board, and the Executive Committee, if established, shall also be a Standing Committee. Other committees composed of Board members with continuing subject matter jurisdiction, or having a meeting schedule fixed by charter, ordinance, resolution, or formal action of the Board, shall also be Standing Committees of the Board.

Section 2. Appointment to Standing Committees

For Standing Committees, the Chair shall nominate committee members, subject to approval by a majority vote of the Board. If the Board fails to approve the Chair’s nomination(s) to a Standing Committee, the Board may entertain a motion for the appointment of committee members.

Section 3. Committee Voting

Action by a committee on all matters shall require an affirmative vote of a majority of the members of the committee who are present at the meeting.

Section 4. Alternate Directors in Standing Committees

Alternate Directors may serve on a Standing Committee, vote on matters in committee, chair a committee, and fully participate in discussion and debate during committee meetings. In

addition, in the event a member of a Standing Committee is unavailable to attend a duly noticed meeting of that committee, the alternate Director representing the same Member Agency as the absent Director may attend and, if applicable, vote in the committee meeting in place of the absent Director. The alternate Director may also chair the committee and fully participate in discussion and debate during meetings when the regular Director is absent. Notwithstanding the above, this section shall not apply to the Executive Committee or as provided in Article V, Section 4 of these Bylaws.

Section 5. Removal of Committee Members

The Board may remove a committee member from a committee, with or without cause, by a majority vote of the Board.

Section 6. Ad Hoc Committees

The Board may establish temporary ad hoc advisory committees that: (a) are composed of less than a quorum of the Board, (b) have no continuing subject matter jurisdiction, and (c) have no meeting schedule fixed by charter, ordinance, resolution, or formal action of the Board. The Chair shall appoint the members of such ad hoc committees.

ARTICLE IX

CHIEF EXECUTIVE OFFICER

The Chief Executive Officer shall be responsible for the day-to-day operation and management of SDCP and the CCA Program. The Chief Executive Officer may exercise all powers of the Authority, except those powers specifically reserved to the Board under the JPA Agreement (including, but not limited to, those powers reserved in Section 4.6, Specific Responsibilities of the Board) or these Bylaws, or those powers which by law must be exercised by the Board.

ARTICLE X

PROCEDURES FOR AMENDING JPA AGREEMENT AND BYLAWS

Section 1. General Requirements

Under Section 4.12.2 of the JPA Agreement, the Board may adopt amendments to the JPA Agreement and these Bylaws by a two-thirds vote following 30 days' advance written notice to the Member Agencies. This Article provides further procedures concerning SDCP's consideration and approval of amendments to the JPA Agreement and these Bylaws.

Section 2. Initial Consideration; Notice to Member Agencies

The Board shall consider proposed amendments to the JPA Agreement or these Bylaws at an open and public meeting of the Board. Following such consideration, the Board may, by majority vote, direct the Chief Executive Officer to provide written notice of the proposed amendment(s) to the Member Agencies in any manner permitted under Section 9.4 of the JPA Agreement.

Section 3. Adoption of Amendments

At a Board meeting held at least 30 days after such notices have been provided, the Board may consider adoption of the proposed amendment(s) to the JPA Agreement or these Bylaws, which shall require a two-thirds vote of the Board. The Authority shall provide prompt written notice to all Member Agencies of the action taken and enclose the adopted or modified document(s).

San Diego ~~Community~~ **Power**

- Joint Powers Agreement -

Amended and Restated Effective December 16, 2021

Deleted: Regional

Deleted: Choice Energy Authority

Formatted: Underline

Previous Versions/Amendments:

Original Agreement Effective October 1, 2019

First Amendment Effective November 22, 2019

**SAN DIEGO COMMUNITY POWER
JOINT POWERS AGREEMENT**

This Joint Powers Agreement (the “Agreement”), first effective as of October 1, 2019, and amended and restated effective December 16, 2021, is made by the Founding Members of San Diego Community Power, including cities of San Diego, Chula Vista, La Mesa, Encinitas, and Imperial Beach, and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the public agencies set forth in **Exhibit B**.

RECITALS

1. Effective October 1, 2019, the Founding Members entered into that certain Joint Powers Agreement for the San Diego Regional Community Choice Energy Authority (“Original Agreement”), which among other things established a separate public agency in order to collectively study, promote, develop, conduct, operate, and manage energy programs. On November 22, 2019, the Board of Directors approved the First Amendment to the Original Agreement to change the agency’s name from the “San Diego Regional Community Choice Energy Authority” to “San Diego Community Power.” The Board of Directors now desires, pursuant to Section 4.12.2(c), to amend and restate the Original Agreement as set forth herein.
2. The Parties are public agencies sharing various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and their inhabitants.
3. SB 350, adopted in 2015, mandates a reduction in greenhouse gas emissions to 40 percent below 1990 levels by 2030 and to 80 percent below 1990 levels by 2050. In 2018, the State Legislature adopted SB 100, which directs the Renewable Portfolio Standard to be increased to 60% renewable by 2030 and establishes a policy for eligible renewable energy resources and zero-carbon resources to supply 100 percent of electricity retail sales to California end-use customers by 2045.
4. The purposes for the Founding Members (as such term is defined in Exhibit A) entering into this Agreement include procuring/developing electrical energy for customers in participating jurisdictions, addressing climate change by reducing energy-related greenhouse gas emissions, promoting electrical rate price stability, and fostering local economic benefits such as job creation, local energy programs and local power development. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to State, regional, and local solar and wind energy production and energy storage.
5. The Parties to this Agreement have established a separate public agency, known as San Diego Community Power (“SDCP”), under the provisions of the Joint Exercise of Powers

Deleted: SAN DIEGO REGIONAL COMMUNITY CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

Deleted: REGIONAL

Deleted: CHOICE ENERGY AUTHORITY

Deleted: Regional

Deleted: Choice Energy Authority

Deleted: (Authority)

Deleted: 2

Deleted: 3

Deleted: 4

Deleted: desire to

Deleted: the

Deleted: Regional

Deleted: Choice Energy Authority

Deleted: Authority

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

Act of the State of California (Government Code Section 6500 et seq.) (“Act”) in order to collectively study, promote, develop, conduct, operate, and manage energy programs.

6. The Founding Members have each adopted an ordinance electing to implement through SDCP a Community Choice Aggregation program pursuant to California Public Utilities Code Section 366.2 (“CCA Program”). The first priority of SDCP will be the consideration of those actions necessary to implement the CCA Program on behalf of participating jurisdictions.

Deleted: 5

Deleted: the Authority

Deleted: the Authority

7. By establishing SDCP, the Parties seek to:

Deleted: 6

Deleted: the Authority

- (a) Provide electricity service to residents and businesses located within the municipal boundaries of the public agencies that signed on to this agreement in a responsible, reliable, innovative, and efficient manner;
- (b) Provide electric generation rates to all ratepayers that are lower or at least competitive with those offered by the Investor Owned Utility (IOU), San Diego Gas & Electric (SDG&E), for similar products;
- (c) Offer differentiated energy products for standard commodity electric service that provide a cleaner power portfolio than that offered by the IOU for similar service and a 100 percent renewable content option in which communities and customers may “opt-up” and voluntarily participate, with the ultimate objective of achieving—and sustaining—100 percent renewable energy availability and usage, at competitive rates, within SDCP service territory by no later than 2035, and then beyond;
- (d) Develop an aggregate electric supply portfolio with overall lower greenhouse gas (GHG) emissions than the IOU, and one that supports near-term achievement of the Parties’ greenhouse gas reduction goals and renewable electricity goals;
- (e) Prioritize the use and development of local, cost-effective renewable and distributed energy resources in ways that encourage and support local power development and storage, avoids the use of unbundled renewable energy credits, and excludes coal and avoids nuclear contracts;
- (f) Promote an energy portfolio that incorporates energy efficiency and demand response programs and pursues ambitious energy consumption reduction goals;
- (g) Provide a range of energy product and program options, available to all Parties and customers, that best serve their needs, their local communities, and support regional sustainability efforts.
- (h) Demonstrate quantifiable economic benefits to the region including prevailing wage jobs, local workforce development, economic development programs, new energy programs, and increased local energy investments;

Deleted: the Authority

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

- (i) To the extent authorized by law, support a stable, skilled, and trained workforce through a variety of mechanisms, including neutrality agreements, that are designed to ensure quality workmanship at fair and competitive rates and which benefit local residents by delivering cost-effective clean energy programs and projects;
- (j) Promote supplier and workforce diversity, including returning veterans and those from regional disadvantaged and under-represented communities of concern, to reflect the diversity of the region;
- (k) Promote personal and community ownership of renewable generation and energy storage resources, spurring equitable economic development and increased resilience throughout the region.
- (l) Ensure that low-income households are provided with affordable electric rates and have access to special utility rates including California Alternative Rates for Energy (CARE) and Family Electric Rate Assistance (FERA) programs;
- (m) Pursue purposeful and focused investment in communities of concern, prioritization of local renewable power, workforce development, and policies and programs centered on economic, environmental, and social equity.
- (n) Use discretionary program revenues to support [SDCP's](#) long-term financial viability, enhance customer rate stability, and provide all Parties and their customers with access to innovative energy programs, projects and services throughout the region; and
- (o) Create an administering [SDCP](#) that is financially sustainable, responsive to regional priorities, well-managed, and a leader in fair and equitable treatment of employees through adopting appropriate best practice employment policies, including but not limited to efficient consideration of petitions to unionize, participating in collective bargaining, if applicable, and providing appropriate wages and benefits.

Deleted: the Authority

Deleted: Authority

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

1. **DEFINITIONS AND EXHIBITS**

- 1.1 **Definitions.** Capitalized terms used in this Agreement shall have the meanings specified in **Exhibit A**, unless the context requires otherwise.
- 1.2 **Documents Included.** This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement:

Exhibit A: Definitions
Exhibit B: List of Founding Members
Exhibit C: Annual Energy Use by Jurisdiction
Exhibit D: Voting Shares of Founding Members
Exhibit E: Signature [Pages of Founding Members on Original Agreement](#)
[Exhibit F: Signature Pages of Additional Parties](#)

~~Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – “
JOINT POWERS AGREEMENT”~~

2. FORMATION OF SAN DIEGO COMMUNITY POWER

2.1 **Effective Date and Term.** This Agreement became effective and [SDCP began to exist as a separate public agency on October 1, 2019. This Agreement was amended and restated effective December 16, 2021.](#) SDCP shall continue to exist, and this Agreement shall be effective, until the Agreement is terminated in accordance with Section 8.4 (Mutual Termination) of this Agreement, subject to the rights of the Parties to withdraw from [SDCP](#), pursuant to Section 8.1.

~~Deleted: s~~

~~Deleted: THE~~

~~Deleted: REGIONAL~~

~~Deleted: CHOICE ENERGY AUTHORITY~~

~~Deleted: shall~~

~~Deleted: o~~

~~Deleted: the Authority~~

~~Deleted: shall~~

2.2 **Formation of [SDCP](#).** Under the Act, the Parties hereby create a separate joint exercise of power agency which is named San Diego [Community Power \(formerly known as the San Diego Regional Community Choice Energy Authority\)](#). Pursuant to Sections 6506 and 6507 of the Act, [SDCP](#) is a public agency separate from the Parties. The jurisdiction of [SDCP](#) shall be all territory within the geographic boundaries of the Parties; however, [SDCP](#) may, as authorized under applicable law, undertake any action outside such geographic boundaries as is necessary and incidental to the accomplishment of its purpose.

~~Deleted: the date this Agreement is executed by the City of San Diego and at least one other public agency after the adoption of the ordinances required by Public Utilities Code Section 366.2(c)(12)~~

~~Deleted: The Authority shall provide notice to the Parties of the Effective Date. The Authority~~

~~Deleted: the Authority~~

~~Deleted: the Authority~~

~~Deleted: Regional~~

~~Deleted: Choice Energy Authority~~

~~Deleted: the Authority~~

~~Deleted: the Authority~~

~~Deleted: the Authority~~

~~Deleted: the Authority~~

~~Deleted: the Authority~~

2.3 **Purpose.** The purpose and objectives of this Agreement are to establish [SDCP](#), to provide for its governance and administration, and to define the rights and obligations of the Parties. This Agreement authorizes [SDCP](#) to provide opportunities by which the Parties can work cooperatively to create economies of scale, provide for stronger regulatory and legislative influence at the State level, and implement sustainable energy initiatives that reduce energy demand, increase energy efficiency, and advance the use of clean, efficient, and renewable resources in the region for the benefit of all the Parties and their constituents, including, but not limited to, establishing and operating a Community Choice Aggregation program.

2.4 **Addition of Parties.** After the initial formation of [SDCP](#) by the Founding Members, any incorporated municipality, county, or other public agency authorized to be a community choice aggregator under Public Utilities Code Section 331.1 located within the service territory of the IOU may apply to and become a member of [SDCP](#) if all the following conditions are met:

~~Deleted: the Authority~~

~~Deleted: the Authority~~

2.4.1 The adoption by a two-thirds vote of the Board satisfying the requirements described in Section 4.11 (Board Voting) of this Agreement, of a resolution authorizing membership into [SDCP](#);

~~Deleted: the Authority~~

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

2.4.2 The adoption by the public agency of a CCA ordinance as required by Public Utilities Code Section 366.2(c)(12) and approval and execution of this Agreement and other necessary program agreements by the public agency;

2.4.3 Payment of a membership fee, if any, as may be required by the Board to cover SDCP costs incurred in connection with adding the new party; and

Deleted: Authority

2.4.4 Satisfaction of any other reasonable conditions established by the Board.

Pursuant to this Section 2.4 (Addition of Parties), all Parties shall be required to commence electric service as soon as is practicable within statutory and regulatory requirements, as determined by the Board and SDCP management, as a condition to becoming a Party to this Agreement. Following satisfaction of the above conditions, SDCP shall ministerially add the new Party's signature page to Exhibit F of this Agreement and circulate a copy of the Agreement to all of the Parties.

Deleted: Authority

2.5 **Continuing Participation.** The Parties acknowledge that membership in SDCP may change by the addition, withdrawal and/or termination of Parties. The Parties agree to participate with such other Parties as may later be added by the Board, as described in Section 2.4 (Addition of Parties) of this Agreement. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

Deleted: the Authority

3. **POWERS**

3.1 **General Powers.** SDCP shall have the powers common to the Parties which are necessary or appropriate to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 3.4 (Limitation on Powers) of this Agreement.

Deleted: The Authority

3.2 **Specific Powers.** Specific powers of SDCP shall include, but not be limited to, each of the following powers, which may be exercised at the discretion of the Board:

Deleted: the Authority

3.2.1 make and enter into contracts;

3.2.2 employ agents and employees, including but not limited to a Chief Executive Officer;

3.2.3 acquire, own, contract, manage, maintain, and operate any buildings, public works, improvements or other assets including but not limited to public electric generation resources;

3.2.4 acquire property for electric generation/interconnection purposes by eminent domain, or otherwise, except as limited under Section 6508 of the

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

Act and Sections 3.6 and 4.12.3 of this Agreement, and to hold or dispose of any property; provided, however, SDCP shall not exercise the power of eminent domain within the jurisdiction of a Party over its objection;

Deleted: the Authority

- 3.2.5 lease any property;
- 3.2.6 sue and be sued in its own name;
- 3.2.7 incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers authorized by law pursuant to Government Code Section 53850 et seq. and authority under the Act;
- 3.2.8 issue revenue bonds and other forms of indebtedness;
- 3.2.9 apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state or local public agency;
- 3.2.10 form independent corporations or entities, if necessary, to carry out energy supply and energy conservation programs at the lowest possible cost or to take advantage of legislative or regulatory changes;
- 3.2.11 submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;
- 3.2.12 adopt rules, regulations, policies, bylaws and procedures governing the operation of SDCP;
- 3.2.13 make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services;
- 3.2.14 enter into neutrality agreements where SDCP has a proprietary or significant financial interest, negotiate project labor agreements, community benefits agreements and collective bargaining agreements with the local building trades council and other interested parties; and
- 3.2.15 receive revenues from sale of electricity and other energy-related programs.

Deleted: the Authority

Deleted: the Authority

- 3.3 **Additional Powers to be Exercised.** In addition to those powers common to each of the Parties, SDCP shall have those powers that may be conferred upon it by law and by subsequently enacted legislation.

Deleted: the Authority

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

3.4 **Limitation on Powers.** As required by Section 6509 of the Act, the powers of SDCP are subject to the restrictions upon the manner of exercising power possessed by the City of Encinitas and any other restrictions on exercising the powers of SDCP that may be adopted by the Board.

Deleted: the Authority

Deleted: the Authority

3.5 **Obligations of SDCP.** The debts, liabilities, and obligations of SDCP shall not be the debts, liabilities, and obligations of any of the Parties unless a Party agrees in writing to assume any of the debts, liabilities, and obligations of SDCP with the approval of its Governing Body, in its sole discretion. In addition, pursuant to the Act, no Director shall be personally liable on the bonds or subject to any personal liability or accountability by reason of the issuance of bonds.

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

3.6 **Compliance with Local Zoning and Building Laws.** Notwithstanding any other provisions of this Agreement or state law, any facilities, buildings or structures located, constructed or caused to be constructed by SDCP within the territory of SDCP shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities are constructed.

Deleted: the Authority

Deleted: the Authority

3.7 **Compliance with the Political Reform Act and Government Code Section 1090.** SDCP and its officers and employees shall comply with the Political Reform Act (Government Code Section 81000 et seq.) and Government Code Section 1090 et seq. The Board shall adopt a Conflict of Interest Code pursuant to Government Code Section 87300. The Board may adopt additional conflict of interest regulations in the Operating Policies and Procedures.

Deleted: The Authority

4. **GOVERNANCE**

4.1 **Board of Directors.**

4.1.1 The Governing Body of SDCP shall be a Board of Directors (“Board”) consisting of two Directors for each Party appointed in accordance with Section 4.2 (Appointment and Removal of Directors) of this Agreement until there are five or more Parties of SDCP. When the fifth Party joins SDCP, the number of Directors per Party shall be reduced to one Director per Party; each Party shall determine which Director shall be that Party’s representative on the Board within 45 days of the date the fifth Party joins SDCP.

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

4.1.2 Each Director(s) must be a member of the Governing Body of the appointing Party. Each Director shall serve at the pleasure of the Governing Body of the Party whom appointed such Director and may be removed as Director by such Governing Body at any time. If at any time a vacancy occurs on the Board, then a replacement shall be appointed to fill the position of the previous Director within 45 days after the date that position becomes vacant.

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

Deleted: the Authority

4.1.3 Once [SDCP](#) reaches five members and becomes governed by a single appointed Director for each Party, then the Governing Body of each Party shall appoint an alternate to serve in the absence of the primary Director. The alternate is not required to be a member of the Governing Body of the appointing Party. The alternate shall have all the rights and responsibilities of the primary Director when serving in his/her absence.

4.1.4 Any change to the size and composition of the Board other than what is described in this section shall require amendment of this Joint Powers Agreement in accordance with Section 4.12.

4.2 **Appointment and Removal of Directors.** The Directors shall be appointed and may be removed as follows:

4.2.1 The Governing Body of each Party shall appoint and designate in writing two regular Directors if there are four or fewer Parties to this Agreement, or one regular Director if there are five or more Parties to this Agreement, who shall be authorized to act for and on behalf of the Party on matters within the powers of [SDCP](#). The Governing Body of each Party shall appoint and designate in writing one alternate Director if there are five or more Parties in [SDCP](#) who may vote on matters when the regular Director is absent from a Board meeting. The alternate Director may [serve on committees](#), vote on matters in committee, chair committees, and fully participate in discussion and debate during meetings. All Directors and alternates shall be subject to the Board's adopted Conflict of Interest Code.

Deleted: the Authority

Deleted: the Authority

4.2.2 [SDCP](#)'s policies and procedures, to be developed and approved by the Board, pursuant to Section 3.2.12, shall specify the reasons for and process associated with the removal of an individual Director for cause. Notwithstanding the foregoing, no Party shall be deprived of its right to seat a Director on the Board and any such Party for which its Director and/or alternate Director have been removed may appoint a replacement.

Deleted: The Authority

4.3 **Director Compensation.** The Board may adopt by resolution a policy relating to the compensation of its Directors.

4.4 **Terms of Office.** Each Party shall determine the term of office for their regular and alternate Director.

4.5 **Purpose of Board.** The general purpose of the Board is to:

4.5.1 Provide structure for administrative and fiscal oversight;

4.5.2 Retain a Chief Executive Officer to oversee day-to-day operations of [SDCP](#);

Deleted: the Authority

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

- 4.5.3 Retain legal counsel;
- 4.5.4 Identify and pursue funding sources;
- 4.5.5 Set policy;
- 4.5.6 Maximize the utilization of available resources; and
- 4.5.7 Oversee all Committee activities.

4.6 **Specific Responsibilities of the Board.** The specific responsibilities of the Board shall be as follows:

- 4.6.1 Identify Party and ratepayer needs and requirements;
- 4.6.2 Formulate and adopt an annual budget prior to the commencement of the fiscal year;
- 4.6.3 Develop and implement a financing and/or funding plan for ongoing [SDCP](#) operations and capital improvements, if applicable;
- 4.6.4 Retain necessary and sufficient staff and adopt personnel and compensation policies, rules and regulations;
- 4.6.5 Develop a workforce policy that promotes a local, sustainable, and inclusive workforce;
- 4.6.6 Adopt policies for procuring electric supply and operational needs such as professional services, equipment and/or supplies;
- 4.6.7 Develop and implement a Strategic Plan to guide the development, procurement, and integration of renewable energy resources consistent with the intent and priorities identified in this Agreement;
- 4.6.8 Adopt rules for the disposal of surplus property;
- 4.6.9 Establish standing and ad hoc committees as necessary to ensure that the interests of [SDCP](#) and concerns of each Party are represented to ensure effective operational, technical, and financial functioning of [SDCP](#) and monitor the distribution and usage of [SDCP](#) programs and benefits throughout [SDCP](#)'s service territory;
- 4.6.10 The setting of retail rates for power sold by [SDCP](#) and the setting of charges for any other category of retail service provided by [SDCP](#);
- 4.6.11 To wind up and resolve all obligations of [SDCP](#) in the event [SDCP](#) is terminated pursuant to Section 8.2;

Deleted: Authority

Deleted: the Authority

Deleted: the Authority

Deleted: Authority

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

4.6.12 Address any concerns of consumers and customers;

4.6.13 Conduct and oversee [SDCP](#) operational audits at intervals not to exceed three years including review of customer access to [SDCP](#) programs and benefits, where applicable;

Deleted: Authority

Deleted: Authority

4.6.14 Arrange for an annual independent fiscal audit;

4.6.15 Adopt such bylaws, rules and regulations as are necessary or desirable for the purposes hereof; provided that nothing in the bylaws, rules and regulations shall be inconsistent with this Agreement;

4.6.16 Exercise the Specific Powers identified in Sections 3.2 and 4.6 except as those which the Board may elect to delegate to the Chief Executive Officer; and

4.6.17 Discharge other duties as appropriate and/or required by law.

4.7 **Startup Responsibilities.** [SDCP](#) shall have the duty to do the following within one year of the Effective Date of the Agreement:

Deleted: The Authority

4.7.1 Oversee the preparation of, adopt, and update an implementation plan, pursuant to Public Utilities Code Section 366.2(c)(3), for electrical load aggregation;

4.7.2 Prepare a statement of intent, pursuant to Public Utilities Code Section 366.2(c)(4), for electrical load aggregation;

4.7.3 Encourage other qualified public agencies to participate in [SDCP](#);

Deleted: the Authority

4.7.4 Obtain financing and/or funding as is necessary to support start up and ongoing working capital;

4.7.5 Evaluate the need for, acquire, and maintain insurance;

4.7.6 Consider and take action on the assumption of City of San Diego consulting and services agreements related to [SDCP](#)'s start up and implementation activities, subject to the City of San Diego continuing to advance payment, or if another source is secured by the JPA, until such time as an agreement is executed for payment of Initial Costs as specified under Section 7.3.2.

Deleted: the Authority

4.8 **Meetings and Special Meetings of the Board.** The Board shall hold at least four regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour, and place of each regular meeting shall be fixed annually by resolution of the Board. The location of regular meetings may rotate for the convenience of the Parties, subject to Board

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

approval and availability of appropriate meeting space. Regular meetings may be adjourned to another meeting time. Special meetings of the Board may be called in accordance with the provisions of Government Code Section 54956. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. Board meeting agendas generally shall be set, in consultation with the Board Chair, by the Chief Executive Officer appointed by the Board pursuant to Section 5.5. The Board itself may add items to the agenda upon majority vote pursuant to Section 4.11.1.

4.9 **Brown Act Applicable.** All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950, et seq.).

4.10 **Quorum.** A simple majority of the Directors shall constitute a quorum. No actions may be taken by the Board without a quorum of the Directors present. If a Party fails to be represented by a Director(s) or alternate Director in more than one meeting in a 12-month period, the Board may take action by publicly noticing the Party that they are at risk of lack of representation within SDCP.

Deleted: the Authority

4.11 **Board Voting.**

4.11.1 **Equal Vote.** Once a quorum has been established, in general, except when Special Voting is expressly required pursuant to Section 4.12 hereof, Board action shall require votes of a majority of the total number of the Directors of the Board. All votes taken pursuant to this Section 4.11.1 shall be referred to as an “Equal Vote.” The consequence of a tie vote shall generally be “no action” taken. Notwithstanding the foregoing, an “Equal Vote” may be subject to a “Voting Shares Vote” as provided in Section 4.11.2, below.

4.11.2 Voting Shares Vote.

(a) At the same meeting at which an Equal Vote action was taken, three or more Directors shall have the right to request and conduct a “Voting Shares Vote” to reconsider the action approved by the Equal Vote; provided, however, that if there are eight or more Parties to this Agreement, the number of Directors required to request and conduct a Voting Shares Vote to reconsider an Equal Vote action shall be one less than a quorum of the Board.

Deleted: have

Deleted: cd

Deleted: at

Deleted: have

Deleted: cd

(b) Approval of a proposed action by a Voting Shares Vote to reconsider an Equal Vote action shall require the affirmative vote of Directors representing a two-thirds supermajority (66.7%) of the “Voting Shares” cast. The formula and process for allocating Voting Shares is set forth in Section 4.11.3, below. If a Voting Shares Vote for reconsideration fails, the legal effect is to affirm the Equal Vote with respect to which the Voting Shares Vote was

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

taken. If the Voting Shares Vote succeeds, the legal effect is to nullify the Equal Vote with respect to which the Voting Shares Vote was taken. If the underlying Equal Vote was a tie, the Voting Shares Vote replaces that tie vote. No action may be taken solely by a Voting Shares Vote without first having taken an Equal Vote.

4.11.3 Voting Shares Vote Formula and Process. For the process of a Voting Shares Vote, each Director shall have a Voting Share as determined by the following formula: (Annual Energy Use/Total Annual Energy) multiplied by 100, where:

- (a) “Annual Energy Use” means, (i) with respect to the first year following the Effective Date, the annual electricity usage, expressed in kilowatt hours (“kWh”), within the Party’s respective jurisdiction and (ii) with respect to the period after the first anniversary of the Effective Date, the annual calendar year electricity usage, expressed in kWh, of accounts within a Party’s respective jurisdiction that are served by SDCP; and
- (b) “Total Annual Energy” means the sum of all Parties’ Annual Energy Use. The initial values for Annual Energy Use will be designated in Exhibit C and shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year. These adjustments shall be approved by the Board.

Deleted: the Authority

The combined voting share of all Directors representing a Party shall be based upon the annual electricity usage within the Party’s jurisdiction. If a Party has two Directors, then the voting shares allocated to that Party shall be equally divided between its two Directors.

The initial voting shares will be set forth in Exhibit D. Exhibit D shall be revised no less than annually by March 1 as necessary to account for changes in the Parties’ Annual Energy Use and at such other times as necessary to account for changes in the number of Parties. Exhibit D and adjustments shall be approved by the Board.

Deleted: changes in the number of Parties and

Notwithstanding the formula for Voting Shares set forth above, for the purposes of the Voting Shares Vote, no one Party to this Agreement shall have a Director (or Directors, as the case may be) with a Voting Share that exceeds 49%, regardless of the Party’s actual annual electricity usage. If a Party would have a voting share that exceeds 49%, the excess above 49% shall be distributed

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

among the other Parties in accordance with their relative annual electricity usage, as shown in Exhibit D.

4.12 Special Voting.

4.12.1 Except as provided below, matters that require Special Voting as described in this section shall require 72 hours prior notice to any Brown Act meeting or special meeting.

4.12.2 Two-thirds vote (or such greater vote as required by state law) of the appointed Directors shall be required to take any action on the following:

- (a) Issue bonds or other forms of debt;
- (b) Adding or removing Parties;
- (c) Amend or terminate this Agreement or adopt or amend the bylaws of SDCP. At least 30 days advance notice shall be provided for such actions. SDCP shall also provide prompt written notice to all Parties of the action taken and enclose the adopted or modified documents; and

Deleted: the Authority

Deleted: The Authority

4.12.3 Three-Fourths Vote shall be required to initiate any action for Eminent Domain

4.12.4 Matters requiring Special Voting under the terms of this Section shall not be subject to Voting Shares Voting pursuant to Section 4.11.2, above.

5. INTERNAL ORGANIZATION

5.1 **Elected and Appointed Officers.** As further provided in this Section 5, the Board shall elect a Chair and Vice Chair from among the Directors and shall appoint a Secretary and a Treasurer as provided in Government Code section 6505.5. No Director may hold more than one such office at any time and elected officers shall represent different Parties of SDCP. Appointed officers shall not be elected officers of the Board.

Deleted: For each fiscal year

Deleted: the Authority

5.2 **Chair and Vice Chair.** At its first meeting of each calendar year, the Board shall elect a Chair and Vice Chair from among the Directors. The term of office of the Chair and Vice Chair shall continue for one year or until a successor is elected, but there shall be no limit on the number of terms held by either the Chair or Vice Chair. The Chair shall be the presiding officer of all Board meetings, and the Vice Chair shall serve in the absence of the Chair. The Chair shall perform duties as may be imposed by the Board. In the absence of the Chair, the Vice-Chair shall perform all of the Chair's duties. The office of the Chair or Vice Chair shall be declared vacant and a new selection shall be made if: (a) the person serving dies, resigns, or the Party that the person represents removes the person as its

Deleted: For

Deleted: fiscal

~~Deleted: SAN DIEGO REGIONAL COMMUNITY CHOICE ENERGY AUTHORITY – ¶ JOINT POWERS AGREEMENT¶~~

representative on the Board, or (b) the Party that he or she represents withdraws from SDCP pursuant to the provisions of this Agreement. Upon a vacancy, the position shall be filled at the next regular meeting of the Board held after such vacancy occurs or as soon as practicable thereafter. Succeeding officers shall perform the duties normal to said offices.

~~Deleted: the Authority~~

- 5.3 **Secretary.** The Board shall appoint a qualified person who is not on the Board to serve as Secretary. The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other office records of SDCP. If the appointed Secretary is an employee of any Party, such Party shall be entitled to reimbursement for any documented out of pocket costs it incurs in connection with such employee's service as Secretary of SDCP, and full cost recovery for any documented hours of service provided by such employee during such Party's normal working hours.

~~Deleted: the Authority~~

~~Deleted: the Authority~~

- 5.4 **Treasurer/Chief Financial Officer and Auditor.** The Board of Directors shall appoint a Treasurer who shall function as the combined offices of Treasurer and Auditor and shall strictly comply with the statutes related to the duties and responsibilities specified in Section 6505.5 of the Act. The Treasurer for SDCP shall be the depository and have custody of all money of SDCP from whatever source and shall draw all warrants and pay demands against SDCP as approved by the Board. The Treasurer shall cause an independent audit(s) of the finances of SDCP to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any qualified person or entity as the law allows at the time. The duties and obligations of the Treasurer are further specified in Section 7. The Treasurer shall serve at the pleasure of the Board. If the appointed Treasurer is an employee of any Party, such Party shall be entitled to reimbursement for any documented out of pocket costs it incurs in connection with such employee's service as Treasurer of SDCP, and full cost recovery for any documented hours of service provided by such employee during such Party's normal working hours.

~~Deleted: the Authority~~

~~Deleted: the Authority~~

~~Deleted: the Authority~~

~~Deleted: the Authority~~

~~Deleted: the Authority~~

- 5.5 **Chief Executive Officer.** The Board shall appoint a Chief Executive Officer for SDCP, who shall be responsible for the day-to-day operation and management of SDCP and the CCA Program. The Board shall appoint a qualified person, hired through a transparent, competitive process, to act as the Chief Executive Officer; he or she may not be an elected member of the Board or otherwise representing any Party to SDCP. The Chief Executive Officer may exercise all powers of SDCP, except those powers specifically reserved to the Board including but not limited to those set forth in Section 4.6 (Specific Responsibilities of the Board) of this Agreement or SDCP's bylaws, or those powers which by law must be exercised by the Board. The Chief Executive Officer may enter into and execute power purchase agreements and other contracts, in accordance with criteria and policies established by the Board.

~~Deleted: the Authority~~

~~Deleted: the Authority~~

~~Deleted: the Authority~~

~~Deleted: the Authority~~

~~Deleted: the Authority~~

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

Deleted: the Authority

5.6 **General Counsel.** 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.

5.7 **Bonding of Persons Having Access to Property.** Pursuant to the Act, the Board shall designate the public officer or officers or person or persons who have charge of, handle, or have access to any property of SDCP exceeding a value as established by the Board, and shall require such public officer or officers or person or persons to file an official bond in an amount to be fixed by the Board.

Deleted: the Authority

5.8 **Other Employees/Agents.** The Board shall have the power by resolution to hire employees or appoint or retain such other agents, including officers, loan-out employees, or independent contractors, as may be necessary or desirable to carry-out the purpose of this Agreement, pursuant to terms and conditions adopted by the Board.

5.9 **Privileges and Immunities from Liability.** All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activities of officers, agents or employees of a public agency when performing their respective functions shall apply to the officers, agents or employees of SDCP to the same degree and extent while engaged in the performance of any of the functions and other duties of such officers, agents or employees under this Agreement. None of the officers, agents or employees directly employed by the Board shall be deemed, by reason of their employment by SDCP to be employed by the Parties or by reason of their employment by SDCP, to be subject to any of the requirements of the Parties.

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

5.10 **Commissions, Boards and Committees.** The Board may establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, related energy programs, and the provisions of this Agreement. To the extent possible, the commissions, boards, and committees should have equal representation from each Party. The Board may establish criteria to qualify for appointment on said commissions, boards, and committees. The Board may establish rules, regulations, policies, or procedures to govern any such commissions, boards, or committees and shall determine whether members shall be compensated or entitled to reimbursement for expenses.

5.10.1 **Executive Committee.** The Board may establish an executive committee consisting of a subset of its Directors. The Board may delegate to the Executive Committee such authority as the Board might determine appropriate to serve as a liaison between the Board and the Chief Executive Officer and to make recommendations to the Board regarding the operations of SDCP. Notwithstanding the foregoing, the Board may not delegate authority regarding essential Board functions, including but

Deleted: the Authority

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

not limited to, approving the fiscal year budget or hiring or firing the Chief Executive Officer, and other functions as provided in SDCP bylaws or policies. Further, the Board may not delegate to the Executive Committee, or any other committee, the Board's authority under Section 3.2.12 to adopt and amend SDCP policies and procedures.

Deleted: the Authority

Deleted: Authority

5.10.2 Finance and Risk Management Committee. The Board shall establish a finance and risk management committee consisting of a subset of its primary or alternate Directors. The primary purpose of the Finance and Risk Management Committee is to review and recommend to the Board:

- (a) A funding plan;
- (b) A fiscal year budget; and
- (c) Financial policies and procedures to ensure equitable contributions by Parties; and

The Finance and Risk Management Committee may have such other responsibilities as may be approved by the Board, including but not limited to advising the Chief Executive Officer on fiscal and risk management policies and procedures, rules and regulations governing investment of surplus funds, audits to achieve best practices in corporate governance and selection and designation of financial institutions for deposit of SDCP funds, and credit/depository matters.

Deleted: Authority

5.10.3 Community Advisory Committee. The Board shall establish a Community Advisory Committee comprised of non-Board members. The primary purpose of the Community Advisory Committee shall be to advise the Board of Directors and provide for a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of SDCP. The Community Advisory Committee is advisory only, and shall not have decision-making authority, nor receive any delegation of authority from the Board of Directors. Each Party may nominate a committee member(s) and the Board shall determine the final selection of committee members, who should represent a diverse cross-section of interests, skills sets and geographic regions.

Deleted: the Authority

5.10.4 Technical Advisory Committee. The Board may establish a Technical Advisory Committee comprised of non-Board members. The primary purpose of the Technical Advisory Committee shall be to advise the Board of Directors and provide SDCP with technical support and engagement in the energy-related operations of SDCP, supplementing the expertise of SDCP staff, independent contractors, and consultants. Each Party may nominate a committee member(s) and the Board shall determine the final selection of committee members, who should have significant expertise in

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

electric markets, programs, procurement, regulatory and legislative engagement, and/or energy law.

5.10.5 Meetings of the Advisory Committees. All meetings of the committees shall be held in accordance with the Brown Act. For the purposes of convening meetings and conducting business, unless otherwise provided in the bylaws, a majority of the members of the committee shall constitute a quorum for the transaction of business, except that less than a quorum or the secretary of each committee may adjourn meetings from time-to-time. As soon as practicable, but no later than the time of posting, the Secretary of the committee shall provide notice and the agenda to each Party, Director(s), and Alternate Director(s).

5.10.6 Officers of Advisory Committees. Unless otherwise determined by the Board, each Committee shall choose its officers, comprised of a Chair, a Vice Chair, and a Secretary.

6. IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

6.1 Preliminary Implementation of the CCA Program.

6.1.1 Enabling Ordinance. In addition to the execution of this Agreement, each Party shall adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(12) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in SDCP.

Deleted: the Authority

6.1.2 Implementation Plan. SDCP shall cause to be prepared and secure Board approval of an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations, and consistent with the terms of this Agreement, as soon after the Effective Date as reasonably practicable.

Deleted: The Authority

6.2 SDCP Documents. The Parties acknowledge and agree that the affairs of SDCP will be implemented through various documents duly adopted by the Board through Board resolution or minute action, including but not necessarily limited to operational procedures and policies, the annual budget, and specific plans such as a local renewable energy development and integration plan and other policies defined as SDCP Documents by this Agreement. All such SDCP Documents shall be consistent with and designed to advance the goals and objectives of SDCP as expressed in this Agreement. The Parties agree to abide by and comply with the terms and conditions of all such SDCP Documents that may be adopted by the Board, subject to the Parties' right to withdraw from SDCP as described in Section 8 (Withdrawal and Termination) of this Agreement.

Deleted: Authority

Deleted: the Authority

Deleted: the Authority

Deleted: Authority

Deleted: the Authority

Deleted: Authority

Deleted: the Authority

6.3 Integrated Resource Plan and Regulatory Compliance. SDCP shall cause to be prepared an Integrated Resource Plan in accordance with California Public Utilities Commission regulations, and consistent with the terms of this

Deleted: The Authority

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

Agreement, that will ensure the long-term development and administration of a variety of energy programs that promote local renewable resources, conservation, demand response, and energy efficiency, while maintaining compliance with other regulatory requirements including the State Renewables Portfolio Standard (RPS) and customer rate competitiveness. SDCP shall prioritize the development of cost competitive clean energy projects in San Diego and adjacent counties.

Deleted: The Authority

- 6.4 **Renewables Portfolio Standards.** SDCP shall provide its customers energy primarily from Category 1 eligible renewable resources, as defined under the California RPS and consistent with the goals of the CCA Program. SDCP shall avoid the procurement of energy from Category 2 or 3 eligible renewable resources (unbundled Renewable Energy Credits or RECs) to the extent feasible. SDCP's ultimate objective shall be to achieve—and sustain—a renewable energy portfolio with 100 percent renewable energy availability and usage, at competitive rates, within SDCP service territory by no later than 2035, and then beyond.

Deleted: The Authority

Deleted: The Authority

Deleted: The Authority

Deleted: the Authority

7. **FINANCIAL PROVISIONS**

- 7.1 **Fiscal Year.** SDCP's fiscal year shall be 12 months commencing July 1 and ending June 30. The fiscal year may be changed by Board resolution.

Deleted: The Authority

7.2 **Depository.**

- 7.2.1 All funds of SDCP shall be held in separate accounts in the name of SDCP and not commingled with funds of any Party or any other person or entity.

Deleted: the Authority

Deleted: the Authority

- 7.2.2 All funds of SDCP shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of SDCP shall be open to inspection and duplication by the Parties at all reasonable times. Annual financial statements shall be prepared in accordance with Generally Accepted Accounting Principles of the United States of America within 6 months of the close of the fiscal year. The Board shall contract with a certified public accountant to make an annual audit of the financial statements of SDCP, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

- 7.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its policies and procedures.

7.3 **Budget and Recovery Costs.**

- 7.3.1 Budget. The initial budget shall be approved by the Board. The Board may revise the budget from time to time as may be reasonably necessary to address contingencies and unexpected expenses. All subsequent budgets of SDCP shall be prepared and approved by the Board in

Deleted: the Authority

Deleted: SAN DIEGO REGIONAL COMMUNITY CHOICE ENERGY AUTHORITY – ¶ JOINT POWERS AGREEMENT¶

accordance with its fiscal management policies that should include a deadline for approval.

7.3.2 Funding of Initial Costs.

- (a) The City of San Diego shall fund the Initial Costs of establishing SDCP and implementing its CCA Program. In the event that the CCA Program becomes operational, the City of San Diego will be reimbursed for its Initial Costs on the terms set forth in this Section. The City shall first submit to the Founding Members a description of the types of costs, cost estimates, and interest for which it expects reimbursement. Reimbursable costs shall include, but not limited to, repayment of hard costs associated with CCA vendor contracts and SDCP formation, reimbursement for the portion of staff costs associated with managing SDCP and program formation and other out-of-pocket expenses directly attributable to the implementation of CCA through SDCP. The City will meet and confer with Founding Members in the development of its proposal for reimbursement to SDCP. The amount and the terms for City reimbursement shall be subject to the approval of SDCP Board. The SDCP Board may establish a reasonable time period over which such Initial Costs are recovered once SDCP revenues commence. In the event that the CCA Program does not become operational, to the extent SDCP funds are available the City of San Diego may be reimbursed in accordance with section 8.6 of this Agreement.

Deleted: the Authority

Deleted: Authority

Deleted: Authority

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

Deleted: Authority

Deleted: Authority

Deleted: Authority

- (b) SDCP shall also reimburse Founding Members for their Initial Costs in supporting the implementation of SDCP pursuant to the execution of an agreement specifying the services provided and their related costs. SDCP may establish reasonable costs and a reasonable time period over which such costs are recovered once SDCP revenues commence. SDCP shall not provide for staff time costs or on-going cost reimbursement to Parties once SDCP becomes fully operational unless a specific Agreement between SDCP and the Party for specified services not otherwise provided by SDCP staff has been approved by the Board.

Deleted: The Authority

Deleted: the Authority

Deleted: The Authority

Deleted: Authority

Deleted: The Authority

Deleted: the Authority

Deleted: the Authority

Deleted: Authority

- 7.3.3 Program Costs. The Parties desire that, to the extent reasonably practicable, all costs incurred by SDCP that are directly or indirectly attributable to the provision of electric services under the CCA Program, including the establishment and maintenance of various reserve and performance funds, shall be recovered through appropriate charges to CCA customers receiving such electric services.

Deleted: the Authority

Deleted: SAN DIEGO REGIONAL COMMUNITY CHOICE ENERGY AUTHORITY – ¶ JOINT POWERS AGREEMENT¶

7.3.4 No Requirement for Contributions or Payments. Parties are not required under this Agreement to make any financial contributions or payments to SDCP, and SDCP shall have no right to require such a contribution or payment unless expressly set forth herein (for example, as provided in Section 2.4.3, with respect to Additional Members and provided in Section 8.1, with respect to Withdrawal), or except as otherwise required by law.

Deleted: the Authority

Deleted: the Authority

Notwithstanding the foregoing, a Party may volunteer to provide, or negotiate terms with SDCP to provide the following:

Deleted: the Authority

- (a) contributions from its treasury for the purposes set forth in this Agreement;
- (b) payments of public funds to defray the cost of the purposes of the Agreement and SDCP;
- (c) advances of public funds for such purposes, such advances to be repaid as provided by written agreement; or
- (d) its personnel, equipment or property in lieu of other contributions or advances.

Deleted: Authority

Any agreement with SDCP to provide any of the above-referenced contributions or payments shall require a Special Vote of the Board pursuant to Section 4.12.2.

Deleted: the Authority

No Party shall be required, by or for the benefit of SDCP, to adopt any local tax, assessment, fee or charge under any circumstances.

Deleted: the Authority

7.4 **Accounts and Reports.** The Treasurer shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any trust agreement entered into with respect to the proceeds of any bonds issued by SDCP. The books and records of SDCP in the hands of the Treasurer shall be open to inspection and duplication at all reasonable times by duly appointed representatives of the Parties. The Treasurer, within 180 days after the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year to the Parties. The Treasurer shall cooperate with all regular audits required by Section 4.6.11 and 4.6.12.

Deleted: the Authority

Deleted: the Authority

7.5 **Funds.** The Treasurer shall receive, have custody of and/or disburse SDCP funds in accordance with the laws applicable to public agencies and generally accepted accounting practices, and shall make the disbursements required by this Agreement in order to carry out any of the purposes of this Agreement.

Deleted: Authority

8. **WITHDRAWAL AND TERMINATION**

8.1 **Withdrawal**

Deleted: SAN DIEGO REGIONAL COMMUNITY CHOICE ENERGY AUTHORITY – ¶ JOINT POWERS AGREEMENT¶

8.1.1 Withdrawal by Parties. Any Party may withdraw its membership in SDCP, effective as of the beginning of SDCP's fiscal year, by giving no less than 180 days advance written notice of its election to do so, which notice shall be given to SDCP and each Party. Withdrawal of a Party shall require an affirmative vote of the Party's Governing Body.

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

8.1.2 Amendment. Notwithstanding Section 8.1.1 (Withdrawal by Parties) of this Agreement, a Party may withdraw its membership in SDCP upon approval and execution of an amendment to this Agreement provided that the requirements of this Section 8.1.2 are strictly followed. A Party shall be deemed to have withdrawn its membership in SDCP effective 180 days after the Board approves an amendment to this Agreement if the Director representing such Party has provided notice to the other Directors immediately preceding the Board's vote of the Party's intention to withdraw its membership in SDCP should the amendment be approved by the Board.

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

8.1.3 Continuing Liability; Further Assurances. A Party that withdraws its membership in SDCP may be subject to certain continuing liabilities, as described in Section 8.5 (Continuing Liability; Refund) of this Agreement, including, but not limited to, power purchase agreements and other SDCP contracts and operational obligations. The withdrawing Party and SDCP shall execute and deliver all further instruments and documents and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from membership in SDCP. The Board shall also consider, pursuant to Section 3.2.12, adoption of a policy that allows a withdrawing Party to negotiate assignment to the Party of costs of electric power or other resources procured on behalf of its customers by SDCP upon its withdrawal. SDCP's policies shall prescribe the rights if any of a withdrawn Party to continue to participate in those Board discussions and decisions affecting customers of the CCA Program that reside or do business within the jurisdiction of the Party. In the implementation of this Section 8.1.3, the Parties intend, to the maximum extent possible, without compromising the viability of ongoing SDCP operations, that any claims, demands, damages, or liabilities covered hereunder, be funded from the rates paid by CCA Program customers located within the service territory of the withdrawing Party, and not from the general fund of the withdrawing Party itself.

Deleted: the Authority

Deleted: Authority

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

Deleted: The Authority

Deleted: Authority

8.2 **Termination of CCA Program.** Nothing contained in Section 6 or elsewhere in this Agreement shall be construed to limit the discretion of SDCP to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.

Deleted: the Authority

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

8.3 **Involuntary Termination.** This Agreement may be terminated with respect to a Party for material non-compliance with provisions of this Agreement or SDCP documents upon a two-thirds vote of the Board in which the minimum Equal Vote or Voting Shares Vote, as applicable in Section 4.11 (Board Voting) of this Agreement, shall be no less than two-thirds vote excluding the vote and voting shares of the Party subject to possible termination. Prior to any vote to terminate this Agreement with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or SDCP Documents that the Party has allegedly violated. The Party subject to possible termination shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its membership in SDCP terminated may be subject to certain continuing liabilities, as described in Section 8.5 (Continuing Liability; Refund) of this Agreement.

Deleted: Authority

Deleted: the Authority

Deleted: the Authority

8.4 **Mutual Termination.** This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its membership in SDCP, and thus terminate this Agreement with respect to such withdrawing Party, as described in Section 8.1 (Withdrawal) of this Agreement.

Deleted: the Authority

8.5 **Continuing Liability; Refund.** Upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims, demands, damages, or liabilities arising from the Party's membership in SDCP through the effective date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any claims, demands, damages, or liabilities commencing or arising after the date of the Party's withdrawal or involuntary termination. In addition, such Party also shall be responsible for (a) any damages, losses, or costs incurred by SDCP which result directly from the Party's withdrawal or termination, including but not limited to costs arising from the resale of capacity, electricity, or any attribute thereof no longer needed to serve such Party's load; and (b) any costs or obligations associated with the Party's customer participation in any program in accordance with the program's terms, provided such costs or obligations were incurred prior to the withdrawal of the Party. The withdrawing Party agrees to pay any such deposit determined by SDCP to cover the Party's liability for the operational and contract costs described above. Any amount of the Party's funds held on deposit with SDCP above that which is required to pay any liabilities or obligations shall be returned to the Party. In the implementation of this Section 8.5, the Parties intend, to the maximum extent possible, without compromising the viability of ongoing SDCP operations, that any claims, demands, damages, or liabilities covered hereunder, be funded from the rates paid by CCA Program customers located within the service territory of the withdrawing Party, and not from the general fund of the withdrawing Party itself.

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

Deleted: Authority

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

8.6 **Disposition of SDCP Assets.** Upon termination of this Agreement and dissolution of SDCP by all Parties, and after payment of all obligations of SDCP, the Board

Deleted: Authority

Deleted: the Authority

Deleted: the Authority

8.6.1 May sell or liquidate SDCP property; and

Deleted: Authority

8.6.2 Shall distribute assets to Parties in proportion to the contributions made by the existing Parties.

Any assets provided by a Party to SDCP shall remain the asset of that Party and shall not be subject to distribution under this section.

Deleted: the Authority

9. MISCELLANEOUS PROVISIONS

9.1 **Dispute Resolution.** The Parties and SDCP shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Before exercising any remedy provided by law, a Party or the Parties and SDCP shall engage in nonbinding mediation in the manner agreed upon by the Party or Parties and SDCP. The Parties agree that each Party may specifically enforce this section. In the event that nonbinding mediation is not initiated or does not result in the settlement of a dispute within 60 days after the demand for mediation is made, any Party and SDCP may pursue any remedies provided by law.

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

9.2 **Liability of Directors, Officers, and Employees.** The Directors, officers, and employees of SDCP shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. SDCP shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Section 995 et seq. Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, SDCP, or its Directors, officers, or employees.

Deleted: the Authority

Deleted: The Authority

Deleted: the Authority

9.3 **Indemnification of Parties.** SDCP shall acquire such insurance coverage as is necessary to protect the interests of SDCP, the Parties and the public. SDCP shall defend, indemnify and hold harmless the Parties and each of their respective governing board members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts and omissions of SDCP.

Deleted: The Authority

Deleted: the Authority

Deleted: The Authority

Deleted: the Authority

9.4 **Notices.** Any notice required or permitted to be made hereunder shall be in writing and shall be delivered in the manner prescribed herein at the principal place of business of each Party. The Parties may give notice by (1) personal

delivery; (2) e-mail; (3) U.S. Mail, first class postage prepaid, or a faster delivery method; or (3) by any other method deemed appropriate by the Board.

Upon providing written notice to all Parties, any Party may change the designated address or e-mail for receiving notice.

All written notices or correspondence sent in the described manner will be deemed given to a party on whichever date occurs earliest: (1) the date of personal delivery; (2) the third business day following deposit in the U.S. mail, when sent by “first class” mail; or (3) the date of transmission, when sent by e-mail or facsimile.

9.5 **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors of each Party.

9.6 **Assignment.** Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this section shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties. This section does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party’s contributions to SDCP, or the disposition of the proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of SDCP or the Parties under this Agreement.

Deleted: the Authority

Deleted: the Authority

9.7 **Severability.** If any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement were adjudged invalid or void by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and conditions of this Agreement shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted by law.

9.8 **Governing Law.** This Agreement is made and to be performed in the State of California, and as such California substantive and procedural law shall apply.

9.9 **Headings.** The section headings herein are for convenience only and are not to be construed as modifying or governing the language of this Agreement.

9.10 **Counterparts.** This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

APPROVAL OF JOINT POWERS AGREEMENT AS AMENDED AND RESTATED

By Resolution of the Board of Directors of San Diego Community Power, this Joint Powers Agreement was amended and restated in accordance with Section 4.12.2(c) of the Agreement, effective as of .

Deleted: CITY OF .¶

By: _____
Chair, Board of Directors
San Diego Community Power

Deleted: (Insert Name), Mayor

ATTEST:

By: _____
Secretary, Board of Directors
San Diego Community Power

Deleted: (Insert Name), City Clerk

APPROVED AS TO FORM:

By: _____
General Counsel
San Diego Community Power

Deleted: (Insert Name), City Attorney

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

Exhibit A: Definitions

“AB 117” means Assembly Bill 117 (Stat. 2002, Ch. 838, codified at Public Utilities Code Section 366.2), which created Community Choice Aggregation.

“Act” means the Joint Exercise of Powers Act of the State of California (Chapter 5, Division 7, Title 1 of the Government Code commencing with Section 6500).

“Agreement” means this Joint Powers Agreement, as amended from time to time.

“Board” means the Board of Directors of SDCP.

Deleted: the Authority

“Community Choice Aggregation” or “CCA” means an electric service option available to cities, counties, and other public agencies pursuant to Public Utilities Code Section 366.2.

“CCA Program” means SDCP’s program relating to CCA that is principally described in Section 2.3 (Purpose) of this Agreement.

Deleted: the Authority

“Days” shall mean calendar days unless otherwise specified by this Agreement.

“Director” means a member of the Board representing a Party, including up to two alternate Directors appointed in accordance with Sections 4.1 (Board of Directors) and 4.2 (Appointment and Removal of Directors) of this Agreement.

“Effective Date” means October 1, 2019, as further described in Section 2.1 (Effective Date and Term) of this Agreement.

Deleted: the date on which the Agreement shall become effective and the Authority shall exist as a separate public agency...

“Founding Member” means any jurisdiction that joins with the City of San Diego to form SDCP in 2019, as identified in Exhibit B. Founding members shall not incur any expenses related to their membership in SDCP or its operational implementation.

Deleted: the San Diego Regional CCE Authority

Deleted: the Authority

“Governing Body” means: for the County of San Diego, its Board of Supervisors; for any city other than San Diego, its City Council; for San Diego, the Mayor and the City Council; and, for any other public agency, the equivalent policy making body that exercises ultimate decision-making authority over such agency.

“Initial Costs” means implementation costs advanced by the City of San Diego and other Founding Members in support of the formation of SDCP, which are (a) directly related to the establishment of SDCP and its CCA program, and (b) incurred by SDCP or its Members relating to the initial operation of SDCP, such as the hiring of the executive and operations staff, any required accounting, administrative, technical and legal services in support of SDCP’s initial formation activities or in support of the negotiation, preparation and approval of power purchase agreements. Initial Costs do not include costs associated with the investigation of the CCA model, attendance at routine planning meetings, or a Party’s pre-formation reports related to their decision to pursue CCA or join SDCP. The SDCP Board shall determine the repayment timing and termination date for the Initial Costs.

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

Deleted: the Authority

Deleted: Authority

“Investor Owned Utilities” means a privately-owned electric utility whose stock is publicly traded. It is rate regulated and authorized to achieve an allowed rate of return.

Deleted: SAN DIEGO REGIONAL COMMUNITY CHOICE ENERGY AUTHORITY – ¶ JOINT POWERS AGREEMENT¶

“Parties” means, collectively, the signatories to this Agreement that have satisfied the conditions as defined above in “Founding Members” or in Section 2.4 (Addition of Parties) of this Agreement, such that they are considered members of SDCP.

Deleted: the Authority

“Party” means, singularly, a signatory to this Agreement that has satisfied the conditions as defined above in “Founding Members” or in Section 2.4 (Addition of Parties) of this Agreement, such that it is considered a member of SDCP.

Deleted: the Authority

“Public Agency” as defined in the Act includes, but is not limited to, the federal government or any federal department or agency, this state, another state or any state department or agency, a county, a county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, a federally recognized Indian tribe, or any joint powers authority formed pursuant to the Act.

“SDCP” means San Diego Community Power.

Deleted: Authority

“SDCP Document(s)” means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions and activities of SDCP, including but not limited to the Operating Policies and Procedures, the annual budget, and plans and policies.

Deleted: Regional

Deleted: Choice Energy Authority

Deleted: Authority

Deleted: the Authority

**Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶**

Exhibit B: List of Founding Members

City of San Diego

City of Chula Vista

City of Encinitas

City of La Mesa

City of Imperial Beach

Exhibit C: Annual Energy Use by Jurisdiction

Party	MWh
San Diego	6,300,000*
Chula Vista	702,000*
Encinitas	231,000**
La Mesa	217,000*
Imperial Beach	108,500

* 2018 data provided by SDG&E

**2017 data provided by SDG&E

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

Exhibit D: Voting Shares of Founding Members

Party	MWh	Voting Share
San Diego	6,300,000*	49.00%
Chula Vista	702,000*	28.45%
Encinitas	231,000**	9.36%
La Mesa	217,000*	8.79%
Imperial Beach	108,500	4.40%
Total	7,558,500	100.00%

* 2018 data provided by SDG&E

**2017 data provided by SDG&E

Exhibit E: Signature Pages of Founding Members on Original Agreement

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY –
JOINT POWERS AGREEMENT

Deleted: CITY OF San Diego
By: _____, Mayor
ATTEST:
By: _____, City Clerk
APPROVED AS TO FORM:
By: _____, City Attorney

Exhibit E: Signatures
CITY OF Chula Vista
By: _____
Mary Casillas Salas, Mayor
ATTEST:
By: _____
Kerry K. Bigelow, City Clerk
APPROVED AS TO FORM:

Deleted: SAN DIEGO REGIONAL COMMUNITY
CHOICE ENERGY AUTHORITY – ¶
JOINT POWERS AGREEMENT¶

Exhibit F: Signature Pages of Additional Parties

Signature pages of additional Parties shall be attached to this Exhibit in accordance with the Agreement and shall be in substantially the following form:

Deleted: s

SIGNATURE PAGE OF THE [NEW MEMBER] AGREEING TO BECOME A PARTY TO THE SAN DIEGO COMMUNITY POWER JOINT POWERS AGREEMENT

Pursuant to [resolution, motion, minute order], the [New Member] hereby agrees to become a Party to the San Diego Community Power Joint Powers Agreement dated October 1, 2019, as amended and restated on [insert] (previously known as the “San Diego Regional Community Choice Energy Authority Joint Powers Agreement”), pursuant to Section 2.4 of the Agreement.

[NEW MEMBER]

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

Note: The addition of the above-named entity as a Party to the San Diego Community Power Joint Powers Agreement is subject to satisfaction of the conditions set forth in Section 2.4 of the Agreement and such other reasonable conditions as may be adopted by the San Diego Community Power Board of Directors.

**BYLAWS OF
SAN DIEGO COMMUNITY POWER**

**ARTICLE I
FORMATION**

San Diego Community Power (“SDCP”) was established on October 1, 2019, pursuant to the San Diego Community Power Joint Powers Agreement,¹ as may be amended from time to time (“JPA Agreement”). The members of SDCP may be referred to herein individually as a “Member Agency” or collectively as the “Member Agencies.”

**ARTICLE II
GENERAL PROVISIONS**

Section 1. Purpose of SDCP

SDCP was established to procure and/or develop electrical energy for customers in participating jurisdictions, address climate change by reducing energy-related greenhouse gas emissions, promote electrical rate price stability, and foster local economic benefits such as job creation, local energy programs and local power development, and to exercise all other powers common to its Member Agencies that are necessary or appropriate to the accomplishment of these and other purposes, as further specified in the JPA Agreement.

Section 2. Purpose of Bylaws

The JPA Agreement authorizes the Board of Directors to adopt such bylaws, rules and regulations as are necessary or desirable to accomplish the purposes of the JPA Agreement; provided, however, that nothing in the bylaws, rules or regulations shall be inconsistent with the JPA Agreement. By approving these Bylaws, the Board intends to adopt additional procedures concerning basic governance, internal organization, Board committees, and other matters addressed in these Bylaws.

Section 3. Definitions

Unless specifically defined in these Bylaws, all defined terms shall have the same meaning as ascribed to them in the JPA Agreement.

Section 4. Precedence

In the event of any conflict between these Bylaws and the JPA Agreement, the JPA Agreement shall control and these Bylaws shall be amended or clarified to eliminate such conflict.

¹ SDCP was originally established and known as the San Diego Regional Community Choice Energy Authority. The agency’s name and the title of the JPA Agreement were changed by the First Amendment to the JPA Agreement, dated November 21, 2019.

ARTICLE III BOARD OF DIRECTORS

Section 1. Board of Directors

Having at least five Member Agencies, SDCP is governed by a Board of Directors (“**Board**”) composed of one representative of each of the Member Agencies. The Board shall have all the powers and functions set forth in Sections 3 and 4 of the JPA Agreement. The governing body of each Member Agency shall appoint and designate in writing one regular Director, who shall be authorized to act for and on behalf of such Member Agency. The regular Director shall be a member of the governing body of the appointing Member Agency.

Section 2. Alternates

The governing body of each Member Agency shall also appoint and designate in writing one alternate Director who may vote on matters when the regular Director is absent from a meeting. The alternate is not required to be a member of the governing body of the appointing Member Agency. The alternate Director shall have all the rights and responsibilities of the primary Director when serving in his or her absence; provided, however, that alternate Directors who are not members of the governing body of the appointing Member Agency shall not attend closed session meetings pursuant to Article V, Section 4 of these Bylaws and applicable law. [As further described in Article VIII, Section 4](#), alternate Directors may [serve on committees](#), vote on matters in committee, chair committees, and fully participate in discussion and debate during meetings.

Deleted: When serving the absence of the primary Director

Section 3. Resignation

A Director may resign at any time by giving written notice to the Board Secretary. The notice of resignation may specify a date on which the resignation will become effective.

Section 4. Vacancy

If at any time a vacancy occurs on the Board, for whatever reason, a replacement shall be appointed by the governing body of the subject Member Agency.

Section 5. Compensation

The Board may adopt by resolution a policy relating to compensation of its Directors.

ARTICLE IV BOARD OFFICERS AND TERMS OF OFFICE

Section 1. Chair

For each [calendar](#) year, the Board shall elect a Chair from among the Directors. The Chair shall be the presiding officer of all Board meetings and perform other duties as may be imposed by the Board. In the event of a vacancy, the position shall be filled at the next regular meeting of the Board held after such vacancy occurs or as soon as practicable thereafter.

Deleted: fiscal

Section 2. Vice Chair

For each calendar year, the Board shall elect a Vice Chair from among the Directors. The Vice Chair shall preside in the absence of the Chair and perform other duties of the Chair in his or her absence. In the event of a vacancy, the position shall be filled at the next regular meeting of the Board held after such vacancy occurs or as soon as practicable thereafter.

Deleted: fiscal

Section 3. Election of Chair and Vice Chair

At its first meeting of each calendar year or as soon thereafter as possible, the Board shall elect the Chair and Vice Chair of SDCP.

Deleted: An annual meeting of the Board shall be held in July

Deleted: to

Section 4. Terms of Office

The terms of office of the Chair and Vice Chair shall continue for one year or until a successor is elected. There shall be no limit on the number of terms.

Deleted: , but t

**ARTICLE V
MEETINGS**

Section 1. Regular Meetings

The Board shall hold at least four regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour, and place of each regular meeting shall be fixed annually by resolution of the Board.

Section 2. Special and Emergency Meetings

Special and emergency meetings of the Board may be called in accordance with the provisions of Government Code sections 54956 and 54956.5, respectively.

Section 3. Open Meetings

All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code § 54950 *et seq.*). Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law.

Section 4. Attendance of Alternates in Closed Session

Pursuant to Government Code section 54956.96(a)(2), the SDCP Board hereby authorizes an alternate Director who is also a member of the governing body of a Member Agency, and is attending a properly noticed SDCP Board meeting in the absence of the regular Director, to attend a closed session held during such meeting. Pursuant to section 54956.96(a)(2), alternate Directors who are not a member of the governing body of a Member Agency may not attend a closed session meeting of SDCP.

Section 5. Preparation of Agendas

The Chief Executive Officer or a designee shall prepare the agenda for each Board meeting. Agenda items will be generated by the need to conduct SDCP's business in a timely manner. The Chief Executive Officer shall review with the Board Chair, or the Vice-Chair in the absence of the Chair, the agenda for regular meetings of the Board.

Section 6. Addition of Agenda Items Before a Meeting

Board Members may add a **"Board Member Initiated Agenda Item"** to a future meeting agenda. Board Member Initiated Items are prepared by the requesting Board Member and require no staff time. Board Member Initiated Items must be submitted to the Chief Executive Officer at least ten (10) days prior to the next Board meeting.

In addition, items may be added to a future Board meeting agenda in the following ways:

- A. The Chair provides an express oral direction to the Chief Executive Officer during a Board meeting. If a Board Member disagrees with the Chair's direction, the Board Member may make a motion regarding the addition of the item without discussion of the substance of the item.
- B. For items requiring staff time, an item shall be added by motion without discussion of the substance of the item.
- C. Requests from members of the audience, after being authorized to speak, may be added to a future agenda by a Board Member as a Board Member Initiated Agenda Item, as discussed above. If the item requires staff time, the item may be added only by motion without discussion of the substance of the item.
- D. The Chair or a majority of the Board may refer items to a committee for further review.

Section 7. Modification of Agenda Order; Addition of Items During a Meeting

The order of items on the agenda may be modified by the Chair if there is no objection, or by a motion and majority vote of the Board. No action or discussion may be undertaken on any item not appearing on the posted agenda, except as allowed under the Brown Act.

Section 8. Consent Calendar

The consent calendar shall consist of items which appear to be routine or ministerial in nature on which no Board discussion will be required. Before adopting the consent calendar, the Chair will ask Board Members whether anyone wishes to move a matter from the consent calendar to the regular agenda. Members of the public may also request to move a matter from the consent calendar to the regular agenda. The Board will then proceed with consideration of the remaining consent calendar. The consent calendar will be acted upon in one motion without discussion. Items pulled from the consent calendar will be considered immediately following adoption of the remaining consent calendar, and staff reports will only be given if requested by the Board Member who pulled them.

Section 9. Public Comments

Agendas of regular meetings shall provide an opportunity for members of the public to address the Board on any item within the jurisdiction of SDCP which are not on the agenda. Generally, speakers shall be limited to three (3) minutes each, with 30 minutes being provided for non-agenda public comments. If the number of speakers is estimated to exceed the 30-minute period, the Chair may, in his or her discretion, reduce the time allotted to each speaker, extend

the period for non-agenda public comment, or continue the remaining comments to the end of the agenda. For public comments on agenda items, the Chair may reduce the time allotted to each speaker in his or her discretion.

Section 10. Order and Procedure at Meetings

All meetings of the Board shall be conducted in an orderly manner designed to expedite the business of the Board in accordance with applicable law, the JPA Agreement, and these Bylaws. Except as otherwise provided in these Bylaws, Robert's Rules of Order will be used as a guide to resolve questions of parliamentary procedures. The General Counsel shall serve as the Parliamentarian.

Section 11. Rules of Debate and Decorum

Debate upon all matters pending before the Board shall be under the supervision of the Chair and conducted in such a manner as to expedite the business of the Board. Every Board Member desiring to speak shall so indicate by using the "request to speak" button, if available, or otherwise address the Chair. Upon recognition by the Chair, the Board Member shall confine remarks to the item under consideration. A Board Member, once recognized, shall not be interrupted when speaking unless it is to call the Board Member to order. If a Board Member while speaking is called to order, the Board Member shall cease speaking until the question of order is determined.

ARTICLE VI

QUORUM AND VOTING

Section 1. Quorum

A simple majority of the Directors shall constitute a quorum. No actions may be taken by the Board without a quorum of the Directors present. If a Member Agency fails to be represented by a Director or alternate Director in more than one meeting in a 12-month period, the Board may take action by publicly noticing the Member Agency that they are at risk of lack of representation within SDCP.

Section 2. Equal Vote

In general, except when Special Voting is expressly required, Board action shall require votes of a majority of the total number of the Directors of the Board. All votes taken pursuant to this provision shall be referred to as an "**Equal Vote.**" The consequence of a tie vote shall generally be "no action" taken. Notwithstanding the foregoing, an Equal Vote may be subject to a "**Voting Shares Vote.**"

Section 3. Voting Shares Vote

- A. At the same meeting at which an Equal Vote action was taken, three or more Directors shall have the right to request and have conducted a "Voting Shares Vote" to reconsider the action approved by the Equal Vote; provided, however, that if there are eight or more Parties to the JPA Agreement, the number of Directors required to request and

Deleted: that

conduct a Voting Shares Vote to reconsider an Equal Vote action shall be one less than a quorum of the Board.

Approval of a proposed action by a Voting Shares Vote to reconsider an Equal Vote action shall require the affirmative vote of Directors representing a two-thirds supermajority (66.7%) of the "Voting Shares" cast. The formula and process for allocating Voting Shares is set forth in the JPA Agreement. If a Voting Shares Vote for reconsideration fails, the legal effect is to affirm the Equal Vote with respect to which the Voting Shares Vote was taken. If the Voting Shares Vote succeeds, the legal effect is to nullify the Equal Vote with respect to which the Voting Shares Vote was taken. If the underlying Equal Vote was a tie, the Voting Shares Vote replaces that tie vote. No action may be taken solely by a Voting Shares Vote without first having taken an Equal Vote.

- B. The formula for a Voting Shares Vote shall be determined pursuant to Section 4.11.3 of the JPA Agreement.

Section 4. Special Voting

Except as provided below, matters that require Special Voting shall require 72 hours' notice prior to any regular or special meeting.

- A. A two-thirds vote of the appointed Directors (or such greater vote as required by State law) shall be required to take any of the following actions:
 - 1. Issue bonds or other forms of debt;
 - 2. Adding or removing Member Agencies;
 - 3. Amending or terminating the JPA Agreement or adopting or amending these Bylaws. At least 30 days' advance notice shall be provided to each Member Agency as provided in Article X of these Bylaws. The Authority shall also provide prompt written notice to all Member Agencies of the action taken and enclose the adopted or modified document(s); and
- B. A three-fourths vote shall be required to initiate any action for eminent domain.
- C. Matters requiring Special Voting shall not be subject to Voting Shares Voting.

ARTICLE VII

POLICY REGARDING CONFIDENTIAL INFORMATION DISCLOSED DURING CLOSED SESSIONS

Information obtained during closed sessions of the Board shall be confidential. Notwithstanding, under certain circumstances, it may be necessary and appropriate for Directors to divulge certain confidential information obtained in closed sessions to representatives of their Member Agencies as authorized by law. Therefore, these Bylaws adopt the policy set forth in California Government Code section 54956.96, which authorizes the

disclosure of confidential closed session information that has direct financial or liability implications for that Member Agency as follows:

- A. A Director or alternate Director who is also a member of the governing body of a Member Agency may disclose information obtained in an SDCP closed session that has direct financial or liability implications for that Member Agency to the following individuals:
 - 1. Legal counsel of that Member Agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that Member Agency; and
 - 2. Other members of the governing body of the Member Agency present in a closed session of that Member Agency.
- B. The governing body of the Member Agency may, upon the advice of its legal counsel, conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of SDCP pursuant to this Article.

ARTICLE VIII

BOARD COMMITTEES

Section 1. Committees

As further provided in the JPA Agreement, the Board may establish advisory commissions, boards, and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, related to energy programs, and the provisions of the JPA Agreement.

The Finance and Risk Management Committee is a “Standing Committee” of the Board, and the Executive Committee, if established, shall also be a Standing Committee. Other committees composed of Board members with continuing subject matter jurisdiction, or having a meeting schedule fixed by charter, ordinance, resolution, or formal action of the Board, shall also be Standing Committees of the Board.

Section 2. Appointment to Standing Committees

For Standing Committees, the Chair shall nominate committee members, subject to approval by a majority vote of the Board. If the Board fails to approve the Chair’s nomination(s) to a Standing Committee, the Board may entertain a motion for the appointment of committee members.

Section 3. Committee Voting

Action by a committee on all matters shall require an affirmative vote of a majority of the members of the committee who are present at the meeting.

Section 4. Alternate Directors in Standing Committees

Alternate Directors may serve on a Standing Committee, vote on matters in committee, chair a committee, and fully participate in discussion and debate during committee meetings. In addition, in the event a member of a Standing Committee is unavailable to attend a duly noticed meeting of that committee, the alternate Director representing the same Member Agency as the absent Director may attend and, if applicable, vote in the committee meeting in place of the absent Director. The alternate Director may also chair the committee and fully participate in discussion and debate during meetings when the regular Director is absent. Notwithstanding the above, this section shall not apply to the Executive Committee or as provided in Article V, Section 4 of these Bylaws.

Deleted: I

Section 5. Removal of Committee Members

The Board may remove a committee member from a committee, with or without cause, by a majority vote of the Board.

Section 6. Ad Hoc Committees

The Board may establish temporary ad hoc advisory committees that: (a) are composed of less than a quorum of the Board, (b) have no continuing subject matter jurisdiction, and (c) have no meeting schedule fixed by charter, ordinance, resolution, or formal action of the Board. The Chair shall appoint the members of such ad hoc committees.

ARTICLE IX

CHIEF EXECUTIVE OFFICER

The Chief Executive Officer shall be responsible for the day-to-day operation and management of SDCP and the CCA Program. The Chief Executive Officer may exercise all powers of the Authority, except those powers specifically reserved to the Board under the JPA Agreement (including, but not limited to, those powers reserved in Section 4.6, Specific Responsibilities of the Board) or these Bylaws, or those powers which by law must be exercised by the Board.

ARTICLE X

PROCEDURES FOR AMENDING JPA AGREEMENT AND BYLAWS

Section 1. General Requirements

Under Section 4.12.2 of the JPA Agreement, the Board may adopt amendments to the JPA Agreement and these Bylaws by a two-thirds vote following 30 days' advance written notice to the Member Agencies. This Article provides further procedures concerning SDCP's consideration and approval of amendments to the JPA Agreement and these Bylaws.

Section 2. Initial Consideration; Notice to Member Agencies

The Board shall consider proposed amendments to the JPA Agreement or these Bylaws at an open and public meeting of the Board. Following such consideration, the Board may, by majority vote, direct the Chief Executive Officer to provide written notice of the proposed

amendment(s) to the Member Agencies in any manner permitted under Section 9.4 of the JPA Agreement.

Section 3. Adoption of Amendments

At a Board meeting held at least 30 days after such notices have been provided, the Board may consider adoption of the proposed amendment(s) to the JPA Agreement or these Bylaws, which shall require a two-thirds vote of the Board. The Authority shall provide prompt written notice to all Member Agencies of the action taken and enclose the adopted or modified document(s).



SAN DIEGO COMMUNITY POWER Staff Report – Item 14

To: San Diego Community Power Board of Directors
From: Byron Vosburg, Director of Power Services
Via: Bill Carnahan, Interim Chief Executive Officer
Subject: Renewable Power Purchase Agreement with Duran Mesa LLC
Date: December 16, 2021

RECOMMENDATION

Approve the Renewable Power Purchase Agreement with Duran Mesa LLC and authorize the Interim CEO to execute the agreement.

BACKGROUND

As SDCP strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) will become integral components of its energy supply portfolio. Long-term PPAs provide renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA that SDCP signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term PPAs lock in renewable energy supply around which SDCP can build its power supply portfolio while also providing power supply cost certainty around which SDCP can develop its pro forma financial model. Finally, the California Renewable Portfolio Standard (RPS), as modified in 2015 by Senate Bill 350, requires that SDCP provide 65% of its RPS-required renewable energy from contracts of at least ten years in length.

In response to last year's Long-term Renewable Energy Request for Offers (RFO), SDCP staff received offers from thirty-two suppliers or developers to purchase renewable energy from eighty-four unique project configurations. Staff reviewed these responses with the Ad Hoc Contracts Committee on August 4, 2020 and narrowed them down on August 18, 2020 to a "short-list" of potential projects with which to enter PPA negotiations. The SDCP board approved – and SDCP subsequently entered into – three of these PPAs during the April and May 2021 Board meetings. This month, we present for your review the final PPA from this solicitation. This 50 MW wind PPA with Duran Mesa LLC will complement the three previous PPAs, which represent a combined 340 MW of solar and 220 MW of storage capacity to be developed in Southern California. Generation from the four projects from this solicitation is expected to total 1,072,000 MWh per year, which is enough to serve approximately 235,000 SDCP customer households.

ANALYSIS AND DISCUSSION

Staff negotiated the attached PPA for the purchase of renewable energy from Duran Mesa Wind Farm, which is a wind project to be developed in Torrance County, New Mexico by Pattern Energy Group LP (“Pattern”).

The PPA has a guaranteed capacity of 50 MW, which will be SDCP’s share of the 105 MW total capacity of Duran Mesa Wind Farm. As previously reviewed with the Ad Hoc Contracts Committee, the contract offers a competitive energy price.

Renewable energy produced by the facility will be an important ~180 GWh/year supply of long-term renewable energy, which represents ~2% of within SDCP’s fully-enrolled power portfolio. Furthermore, the low development risk and near-term online date will be critical to SDCP’s satisfaction of Compliance Period 4 (2021-2024) obligations to deliver 65% of its RPS energy from long-term contracts.

Below is additional information regarding Pattern and the draft PPA.

Background – Pattern Energy Group LP (“Pattern”)

- Established in 2009
- Jointly owned by Canada Pension Plan Investment Board, Riverstone Holdings LLC, and Pattern Energy executives
- Developer and operator of wind, solar, transmission, and energy storage
Operational portfolio includes 30 renewable energy projects totaling 4,400 MW in USA, Mexico, Canada, and Japan Headquartered in San Francisco, CA

Contract Overview – Duran Mesa LLC

- Project: 50 MW Wind
 - SDCP’s 50 MW share of 105 MW Duran Mesa project
 - Duran Mesa is part of ~1,050 MW Western Sky Wind project in New Mexico
- Project location: Torrance County, New Mexico
- Expected commercial operation date: December 31, 2021
- Contract term: 10 years
- Expected annual energy production: approximately 180,000 MWh
 - Equivalent power for approximately 36,000 homes
 - ~2% of SDCP energy requirements
- Guaranteed energy production: 75% of projected annual deliveries
- Energy price:
 - Wind – Fixed energy price applicable to the full term of the agreement
- No collateral obligations for SDCP
- SDCP would receive financial compensation in the event of seller’s failure to successfully achieve certain development milestones

COMMITTEE REVIEW

This project was recommended by the Ad Hoc Contracts Committee on August 18, 2020 and reviewed with the Community Advisory Committee on December 9, 2021.



FISCAL IMPACT

The competitive energy pricing of the PPA is confidential, but the long-term purchase of renewable energy will provide SDCP with significant value and cost certainty over the term of this PPA

ATTACHMENTS

Attachment A: Renewable Power Purchase Agreement with Duran Mesa LLC.



RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Duran Mesa LLC, a limited liability company

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

Description of Facility: The Duran Mesa Wind project, located in Torrance County, New Mexico, as further described in Exhibit A, as such Facility may be modified under the terms of this Agreement.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	Completed on October 20, 2020
Executed Interconnection Agreement	Completed on August 25, 2020
CEC Pre-Certification Obtained	Completed on June 18, 2021
Conditional Use Permit	Completed on July 22, 2020
Network Upgrades Completed	
Construction Start	
Initial Synchronization	
Expected Commercial Operation Date	

Delivery Term: The period for Product delivery will be for ten (10) Contract Years.

Expected Energy:

Contract Year	Expected Energy (MWh)
1	
2	

3		
4		
5		
6		
7		
8		
9		
10		

Guaranteed Capacity: 50 MW

Contract Price:

Contract Year	Contract Price (\$/MWh)
1 – 10	

Product:

Buyer's Share of:

- ☒ Wind Energy
☒ Green Attributes (Portfolio Content Category 1)

Scheduling Coordinator: Seller or Seller designee

Development Security:

Performance Security:

TABLE OF CONTENTS

Page

ARTICLE 1	DEFINITIONS	1
1.1	Contract Definitions.....	1
1.2	Rules of Interpretation	17
ARTICLE 2	TERM; CONDITIONS PRECEDENT.....	18
2.1	Contract Term.	18
2.2	Conditions Precedent	19
2.3	Development; Construction; Progress Reports	20
2.4	Remedial Action Plan	20
ARTICLE 3	PURCHASE AND SALE.....	20
3.1	Purchase and Sale of Product.....	20
3.2	Sale of Green Attributes.....	20
3.3	Imbalance Energy.	21
3.4	Ownership of Renewable Energy Incentives.....	21
3.5	Future Environmental Attributes.	21
3.6	Reserved.....	21
3.7	Reserved.....	21
3.8	Reserved.....	21
3.9	CEC Certification and Verification.	21
3.10	Reserved.....	22
3.11	RPS Standard Terms and Conditions.....	22
3.12	Compliance Expenditure Cap.	22
ARTICLE 4	OBLIGATIONS AND DELIVERIES.....	23
4.1	Delivery.....	23
4.2	Title and Risk of Loss.	24
4.3	Scheduling Coordinator Responsibilities; Forecasting.....	24
4.4	Dispatch Down/Curtailment.	25
4.5	Reserved.....	25
4.6	Reduction in Delivery Obligation.....	25
4.7	Guaranteed Energy Production	26
4.8	Reserved.....	Error! Bookmark not defined.
4.9	Reserved.....	Error! Bookmark not defined.
4.10	WREGIS	26
ARTICLE 5	TAXES	28
5.1	Allocation of Taxes and Charges.....	28
5.2	Cooperation.....	28
ARTICLE 6	MAINTENANCE OF THE FACILITY.....	28
6.1	Maintenance of the Facility.	28
6.2	Maintenance of Health and Safety.....	29

6.3	Shared Facilities.....	29
ARTICLE 7 METERING.....		29
7.1	Metering.....	29
7.2	Meter Verification.....	29
ARTICLE 8 INVOICING AND PAYMENT; CREDIT.....		30
8.1	Invoicing.....	30
8.2	Payment.....	30
8.3	Books and Records.....	30
8.4	Payment Adjustments; Billing Errors.....	31
8.5	Billing Disputes.....	31
8.6	Netting of Payments.....	31
8.7	Seller's Development Security.....	31
8.8	Seller's Performance Security.....	32
8.9	First Priority Security Interest in Cash or Cash Equivalent Collateral.....	32
8.10	Financial Statements.....	33
8.11	33
ARTICLE 9 NOTICES.....		34
9.1	Addresses for the Delivery of Notices.....	34
9.2	Acceptable Means of Delivering Notice.....	34
ARTICLE 10 FORCE MAJEURE.....		35
10.1	Definition.....	35
10.2	No Liability If a Force Majeure Event Occurs.....	35
10.3	Notice.....	36
10.4	Termination Following Force Majeure Event.....	36
ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION.....		36
11.1	Events of Default.....	36
11.2	Remedies; Declaration of Early Termination Date.....	39
11.3	Termination Payment.....	40
11.4	Notice of Payment of Termination Payment.....	40
11.5	Disputes With Respect to Termination Payment.....	41
11.6	Rights And Remedies Are Cumulative.....	41
11.7	Seller Pre-COD Liability Limitations.....	41
ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.....		42
12.1	No Consequential Damages.....	42
12.2	Waiver and Exclusion of Other Damages.....	42
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY.....		43
13.1	Seller's Representations and Warranties.....	43
13.2	Buyer's Representations and Warranties.....	44
13.3	General Covenants.....	45
13.4	Prevailing Wage.....	45

ARTICLE 14 ASSIGNMENT	45
14.1 General Prohibition on Assignments	45
14.2 Collateral Assignment.....	46
14.3 Limited Assignment	47
ARTICLE 15 DISPUTE RESOLUTION	48
15.1 Governing Law.	48
15.2 Venue.	48
15.3 Dispute Resolution.....	48
ARTICLE 16 INDEMNIFICATION	49
16.1 Mutual Indemnity.....	49
16.2 Notice of Claim.....	49
16.3 Failure to Provide Notice.....	49
16.4 Defense of Claims.....	49
16.5 Subrogation of Rights	50
16.6 Rights and Remedies are Cumulative.....	50
ARTICLE 17 INSURANCE	51
17.1 Insurance	51
ARTICLE 18 CONFIDENTIAL INFORMATION	53
18.1 Definition of Confidential Information.....	53
18.2 Duty to Maintain Confidentiality.....	53
18.3 Irreparable Injury; Remedies	54
18.4 Disclosure to Lenders, Etc.	54
18.5 Public Records Act..	54
18.6 Press Releases.	54
ARTICLE 19 MISCELLANEOUS	55
19.1 Entire Agreement; Integration; Exhibits.....	55
19.2 Amendments.	55
19.3 No Waiver.....	55
19.4 No Agency, Partnership, Joint Venture or Lease.....	55
19.5 Severability	55
19.6 Mobile-Sierra.	55
19.7 Counterparts; Electronic Signatures.	55
19.8 Electronic Delivery..	56
19.9 Binding Effect.....	56
19.10 No Recourse to Members of Buyer..	56
19.11 Forward Contract	56
19.12 Further Assurances.....	56

Exhibits:

Exhibit A	Facility Description
Exhibit B	Major Project Development Milestones and Commercial Operation
Exhibit C	Compensation
Exhibit D	Reserved
Exhibit E	Progress Reporting Form
Exhibit F	Form of Average Expected Energy Report
Exhibit G	Guaranteed Energy Production Damages Calculation
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I	Form of Installed Capacity Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Form of Guaranty
Exhibit M	Reserved
Exhibit N	Notices
Exhibit O	Metering Diagram

RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("**Agreement**") is entered into as of _____, 2021 (the "**Effective Date**"), between San Diego Community Power, a California joint powers authority ("**Buyer**") and Duran Mesa LLC ("**Seller**"). Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." 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, permit, construct, own or otherwise control, and operate the Facility; 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 **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"**AC**" means alternating current.

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.12.

[REDACTED]

[REDACTED]

[REDACTED]

"**Adjusted Energy Production**" has the meaning set forth in Exhibit G.

[REDACTED]

[REDACTED]

"**Affiliate**" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Permitted Transferee", "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with

respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“**Available Generating Capacity**” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to generate Energy.

“**Balancing Authority**” has the meaning set forth in the CAISO Tariff.

“**Bankrupt**” means with respect to any entity, such entity that (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, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) 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 (f) is generally unable to pay its debts as they fall due.

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“**Buyer**” means San Diego Community Power, a California joint powers authority.

“**Buyer Default**” means an Event of Default of Buyer.

“**[REDACTED]**”

“**Buyer Performance Security**” means cash or Letter of Credit in an amount equal to the amount of the Development Security or the Performance Security, whichever is provided at the time of the termination.

“**Buyer’s Share**” means the percentage that is equal to the quotient of the Guaranteed Capacity divided by the Installed Capacity.

“**Buyer’s WREGIS Account**” has the meaning set forth in Section 4.10(a).

“**CAISO**” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“**CAISO Approved Meter**” means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment

and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

“CAISO Credit” has the meaning set forth in Exhibit C.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Operating Order” has the same meaning as “Operating Instruction” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“Capacity Damages” has the meaning set forth in Exhibit B.

“CEC” means the California Energy Commission, or any successor agency performing similar statutory functions.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified, as such date may be extended pursuant to Section 3.9) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“CEC Precertification” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

"Claim" has the meaning set forth in Section 16.2(a).

"COD Certificate" has the meaning set forth in Exhibit B.

[REDACTED]

"Collateral Assignment Agreement" has the meaning set forth in Section 14.2.

"Commercial Operation" has the meaning set forth in Exhibit B.

"Commercial Operation Date" means the date Commercial Operation is achieved.

"Commercial Operation Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) sixty (60).

"Compliance Actions" has the meaning set forth in Section 3.12.

"Compliance Expenditure Cap" has the meaning set forth in Section 3.12.

"Confidential Information" has the meaning set forth in Section 18.1.

"Construction Start" has the meaning set forth in Exhibit B.

"Construction Start Date" has the meaning set forth in Exhibit B.

"Contract Price" has the meaning set forth on the Cover Sheet.

"Contract Term" has the meaning set forth in Section 2.1.

"Contract Year" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

"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 the Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

"Cover Sheet" means the cover sheet to this Agreement, which is incorporated into this Agreement.

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“CPUC” means the California Public Utilities Commission or any successor agency performing similar statutory functions.

“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. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Cure Plan” has the meaning set forth in Section 11.1(b)(iv).

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, that such Party is required to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Participating Transmission Owner for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Facility Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller’s obligations or limitations under its Interconnection Agreement with the CAISO, Participating Transmission Owner or distribution operator.

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Facility Energy from the Facility is reduced pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up and shall not include periods during which Seller reduces generation as a result of an Economic Curtailment.

“Damage Payment” means the dollar amount that equals the amount of the Development Security less any Commercial Operation Delay Damages paid by Seller to Buyer hereunder.

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“Defaulting Party” has the meaning set forth in Section 11.1(a).

“Deficient Month” has the meaning set forth in Section 4.10(e).

“Delivery Point” has the meaning set forth in Exhibit A.

“Delivery Term” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Exhibit B.

“Development Security” means (i) cash or (ii) a Letter of Credit, in the amount set forth on the Cover Sheet.

“Disclosing Party” has the meaning set forth in Section 18.2.

“Dynamic Schedule” has the meaning set forth in the CAISO Tariff.

“Early Termination Date” has the meaning set forth in Section 11.2(a).

“Economic Bid” has the meaning set forth in the CAISO Tariff.

“Economic Curtailment” has the meaning set forth in Section 4.5(b).

“Effective Date” has the meaning set forth on the Preamble.

“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point, other than losses that are financially settled by Seller.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof.

“Energy Price” has the meaning set forth in Exhibit C.

“Energy Supply Bid” has the meaning set forth in the CAISO Tariff.

“Event of Default” has the meaning set forth in Section 11.1.

“Excess MWh” has the meaning set forth in Exhibit C.

“Executed Interconnection Agreement Milestone” means the date for completion of execution of the Interconnection Agreement by Seller and the PTO as set forth on the Cover Sheet.

“Expected Commercial Operation Date” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

“Expected Energy” means the quantity of Facility Energy that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year or other time period in the quantity specified on the Cover Sheet.

“Facility” means the wind turbine generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point.

“Facility Energy” means Buyer’s Share of the Wind Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO or PTO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

“Facility Meter” means the CAISO Approved Meter that will measure all Facility Energy, or if a CAISO Approved Meter is not available consistent with PTO requirements, then a PTO-approved meter, together with a CAISO-approved or PTO-approved, as the case may be, data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility net of Electrical Losses and Station Use.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility that prevents Seller from generating Facility Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits,

reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“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 this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, 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, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority,” as such term is used in this Agreement in connection with Seller’s obligations to comply with Law or bear Taxes, shall not in any event include Buyer to the extent that Buyer’s acts or omissions would impose incremental burdens on Seller or Seller’s performance under this Agreement or limit or deprive Seller of any of Seller’s rights or benefits under this Agreement.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“Guaranteed Capacity” means the amount of generating capacity of Buyer’s Share of the Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet, as the same may be adjusted pursuant to Section 5(a) of Exhibit B.

“Guaranteed Commercial Operation Date” means the date that is thirty (30) days after the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Guarantor” means, with respect to Seller, (a) a Person that is acceptable to Buyer in its sole discretion, or (b) any Person that (i) Buyer does not already have any material credit exposure to under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (ii) has an Investment Grade Credit Rating, (iii) has a tangible net worth of at least One Hundred Fifty Million Dollars (\$150,000,000), (iv) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (v) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L, or as reasonably acceptable to Buyer.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

“Indemnifiable Loss(es)” has the meaning set forth in Section 16.1.

“Indemnified Group” has the meaning set forth in Section 16.1.

“Initial Synchronization” means the initial delivery of Facility Energy to the Delivery Point.

“Installed Capacity” means the actual generating capacity of the Facility, as measured in MW(ac) at the point of interconnection as specified in the Interconnection Agreement, evidenced by a certificate from a Licensed Professional Engineer substantially in the form attached as Exhibit I hereto.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

[REDACTED]

“Interest Rate” has the meaning set forth in Section 8.2.

“Inter-SC Trade” or **“IST”** has the meaning set forth in the CAISO Tariff.

“Investment Grade Credit Rating” means a Credit Rating of BBB- or higher by S&P or Fitch or Baa3 or higher by Moody’s.

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

[REDACTED]

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“Joint Powers Agreement” means that certain Joint Powers Agreement dated October 30, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any Person directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“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 (a) having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) being reasonably acceptable to Buyer, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Licensed Professional Engineer” means either (i) the independent engineer retained by the Lenders, or on their behalf under customary terms and conditions, in connection with a financing of the Facility, which engineer, employee or principal thereof (a) is licensed to practice engineering in New Mexico, (b) has training and experience in the power industry specific to the technology of the Facility, (c) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility other than as the independent engineer for the Lenders, and (d) is licensed in an appropriate engineering discipline for the required certification being made, or (ii) a person acceptable to Buyer in its reasonable judgment.

“Locational Marginal Price” or **“LMP”** has the meaning set forth in the CAISO Tariff.

[REDACTED]

“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 this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, 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, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes and Renewable Energy Incentives.

“Lost Output” has the meaning set forth in Section 4.7.

[REDACTED]

“Major Project Development Milestone” has the meaning set forth in in Exhibit B.

“Master File” has the meaning set forth in the CAISO Tariff.

“Milestones” means the development activities for significant permitting, interconnection, financing and construction milestones and the dates associated therewith set forth on the Cover Sheet.

“Moody’s” means Moody’s Investors Service, Inc., or its successor.

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

“MWh” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**NERC**” means the North American Electric Reliability Corporation or any successor entity performing similar functions.

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“**Notice of Claim**” has the meaning set forth in Section 16.2.

“**Participating Transmission Owner**” or “**PTO**” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

“**Party**” or “**Parties**” has the meaning set forth in the Preamble.

“**Performance Measurement Period**” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. For the avoidance of doubt, Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; provided, however, that a new Performance Measurement Period shall begin following any Performance Measurement Period for which Seller pays any liquidated damages or provides any Replacement Product under Section 4.7. Thus, for example, if Seller pays any liquidated damages or provides any Replacement Product under Section 4.7 for the Performance Measurement Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

“**Performance Security**” means (i) cash, (ii) a Letter of Credit, or (iii) a Guaranty, in the sole discretion of Buyer, in the amount set forth on the Cover Sheet.

“**Permitted Transferee**” means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or an Investment Grade Credit Rating; and

(b) At least three (3) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“Planned Outage” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

“PNode” has the meaning set forth in the CAISO Tariff.

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

“Portfolio Content Category 1” or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 2” or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.



“Product” has the meaning set forth on the Cover Sheet. For the avoidance of doubt, “Product” does not include any Capacity Attributes generated by or associated with the Facility.

“Production Tax Credit” or **“PTC”** means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

“Progress Report” means a progress report including the items set forth in Exhibit E.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility and independent power producer industry during the relevant time period with respect to grid-interconnected, utility-scale wind energy generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost

consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale wind energy generating facilities in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“Real-Time Market” has the meaning set forth in the CAISO Tariff

“Receiving Party” has the meaning set forth in Section 18.2.

“REC Price” has the meaning set forth in Exhibit C.

“Remedial Action Plan” has the meaning in Section 2.4.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Replacement Product” means Energy and associated Green Attributes produced by a wind powered electricity generating facility other than the Facility that is owned by an Affiliate of Seller and located in New Mexico and that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), as Renewable Energy Credits meeting the requirements of Portfolio Content Category 1.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

“Resource Adequacy Rulings” means all CPUC rulings and decisions governing resource adequacy that are currently in effect and applicable to the performance of this Agreement and any future 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.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“SB 350 Long-Term Contracting Obligations” means those obligations applicable to Buyer as a result of Senate Bill (SB) 350 (De León), Stats. 2015, ch. 547, which has been implemented by CPUC Decisions 16-12-040, 17-06-026 and 18-05-026.

“SCADA Systems” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer.

“Schedule” has the meaning set forth in the CAISO Tariff, and **“Scheduled”** has a corollary meaning.

“Scheduled Energy” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“Scheduling Coordinator” or **“SC”** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

[REDACTED]

[REDACTED]

“Security Interest” has the meaning set forth in Section 8.8.

“Self-Schedule” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth on the Cover Sheet.

“Seller’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. 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 zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Period” has the meaning set forth in the CAISO Tariff.

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“Shared Facilities Agreement” has the meaning set forth in Section 6.3.

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A.

“Site Control” means that 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.

“Station Use” means:

(a) The Energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

“System Emergency” means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Tax Credits” means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

“Terminated Transaction” has the meaning set forth in Section 11.2(a).

“Termination Payment” has the meaning set forth in Section 11.3.

“Transmission Provider” means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service within the CAISO grid from the Delivery Point.

“Ultimate Parent” means Pattern Energy Group LP.

“Variable Energy Resource” or **“VER”** has the meaning set forth in the CAISO Tariff.

“VER Forecast” means the forecast prepared for the Facility by CAISO, its consultant, or, if approved by CAISO, Seller or Seller’s designee, as part of the Eligible Intermittent Resource Protocol attached as Appendix Q to the CAISO Tariff, or a successor.

“Wind Energy” means Energy that is generated using wind turbines at the Facility and delivered directly to the Delivery Point, net of Electrical Losses.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.10(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of January 4, 2021, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) 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;

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

(c) 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;

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

(e) a reference to a document or agreement, including this Agreement means 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;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including 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;

(h) 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;

(i) 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;

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

(k) the expression "and/or" when used as a conjunction shall connote "any or all of";

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

(m) 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.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("Contract Term"); provided, however, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

2.2 **Conditions Precedent.** The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained and all required conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(e) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to the Commercial Operation Date under WREGIS rules, including (as applicable) the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(h) Seller has paid Buyer for all amounts due and owing under this Agreement, if any, including Commercial Operation Delay Damages, if applicable.

Upon request from Seller from time to time, Buyer shall confirm in writing the completion of those of the foregoing conditions that have been completed by Seller as of such request.

2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of each calendar month from the first calendar month following the Effective Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and shall hold 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 E, and shall include such additional information as may be reasonably requested by Buyer from time to time. 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. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller (a) misses three (3) or more Milestones, or (b) misses any one (1) Milestone by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days after the occurrence of (a) or (b), a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. So long as Seller complies with its obligations under this Section 2.4, its failure to meet one or more milestones shall not be a default under this Agreement, except as set forth in Section 11.1(b)(ii).

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and receive all of the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility (net of Electrical Losses). During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of Energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Seller.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Section 3.5(b), in such event, Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for Buyer's Share of such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim Buyer's Share of such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to bear any costs, losses or liability, or alter the Facility or the operation of the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); *provided*, that the Parties acknowledge and agree such terms are not intended to alter the other material terms of this Agreement.

3.6 **Reserved.**

3.7 **Reserved.**

3.8 **Reserved.**

3.9 **CEC Certification and Verification.** Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC

Certification and Verification throughout the Delivery Term, including compliance with all requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor) that are applicable to the Facility. Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and (subject to Section 3.12) maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification.

3.10 **Reserved.**

3.11 **RPS Standard Terms and Conditions.**

(a) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement.

(b) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term "commercially reasonable efforts" as used in this Section 3.11 means efforts consistent with and subject to Section 3.12.

(c) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

3.12 **Compliance Expenditure Cap.**

(a) If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses ("**Compliance Costs**") Seller shall be required to bear to comply with all of such obligations shall be capped during any Contract Year

at [REDACTED]) per MW of Guaranteed Capacity and during the Delivery Term at an aggregate of [REDACTED]) per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**"). Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating, Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

(b) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

(c) If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated Compliance Costs.

(d) If the Compliance Costs exceed the Compliance Expenditure Cap, then Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time: (1) agree to pay for all or a portion of the Compliance Costs that exceed the Compliance Expenditure Cap as mutually agreed upon in a written amendment to this Agreement (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**") or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12(d) within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice and Seller shall have no further obligations to take, and no liability for a failure to take, these Compliance Actions for the remainder of the Term. If Buyer agrees to pay for all or a portion of the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for its share of the Accepted Compliance Costs in accordance with payment terms agreed upon by the Parties.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point on an as-generated, instantaneous basis. Seller shall effectuate the delivery of Facility Energy through Dynamic Schedules, and shall be responsible for securing such arrangements with CAISO, the PTO and any other Transmission Provider as are necessary in connection therewith. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with

the delivery of Facility Energy at and after the Delivery Point, including, without limitation, transmission costs and transmission line losses.

(b) Green Attributes. All Green Attributes associated with the Facility Energy during the Delivery Term are exclusively dedicated to and will be conveyed to Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility Energy, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes associated with the Facility Energy shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 Scheduling Coordinator Responsibilities; Forecasting.

(a) Seller as Scheduling Coordinator for the Facility. Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of the Product at the Delivery Point. Seller shall determine in its sole discretion how to bid and schedule the Facility Energy from the Project into each of the Day-Ahead Market and Real-Time Market.

(b) CAISO Costs and Revenues. Seller shall be responsible for all CAISO costs (including penalties, Imbalance Energy charges, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy payments, and other payments), including costs and revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility.

(c) Forecasts. Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are consistent with the information actually known by Seller at the time the forecasts are submitted and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(i) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of each month's average-day Expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F, or as reasonably requested by Buyer.

(ii) Monthly Forecast of Energy and Available Generating Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly expected Facility Energy and Available Generating Capacity for each day of the following month.

(d) CAISO Tariff Requirements. To the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order.

(b) Economic Curtailment. Seller may, in its sole discretion, reduce the Facility's generation when the Energy Price is less than the Floor Price. Such reduction shall be considered "Economic Curtailment." The "Floor Price" shall be equal to (a) for the period during which Seller is eligible for Production Tax Credits, the negative value of the sum of (i) the REC Price and (ii) the Production Tax Credits for which Seller is eligible in respect of the output from the Facility during the period of such eligibility, or (b) for the period after Seller's Production Tax Credit eligibility, an amount equal to the product of (i) the REC Price and (ii) negative one (-1).

(c) Failure to Comply. If Seller fails to comply with a Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh, and (B) is any penalties assessed by the CAISO or other charges assessed by the CAISO on Buyer resulting from Seller's failure to comply with the Curtailment Order.

4.5 Reserved.

4.6 Reduction in Delivery Obligation. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) Facility Maintenance.

(i) Subject to providing Buyer one-hundred twenty (120) days' prior Notice, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility, provided, that (i) no notice is required for scheduled maintenance or any changes or extensions thereto which do not result in a shutdown of more than ten percent (10%) of the Guaranteed Capacity, and (ii) Seller may adjust the dates of any scheduled maintenance with fewer than one hundred and twenty (120) days' prior Notice to Buyer so long as (X) Seller makes its request more than three (3) days prior to the expected start date of such scheduled maintenance and (Y) the requested alternate date is acceptable to Buyer.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage and shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of such outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff, or as may be required under a Shared Facilities Agreement.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

(f) Payments. Seller shall remain responsible to Buyer for any payment or penalty otherwise due under this Agreement as a result of a reduction in delivery of Product.

4.7 Guaranteed Energy Production. Seller shall be required to deliver to Buyer an amount of Facility Energy no less than the Guaranteed Energy Production (as defined below) in each Performance Measurement Period. “**Guaranteed Energy Production**” means an amount of Energy, as measured in MWh, [REDACTED] of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer Facility Energy in the amount it could reasonably have delivered to Buyer according to the VER Forecast but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Buyer Default or other failure to perform, Curtailment Periods, or Economic Curtailment (“**Lost Output**”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall, at its discretion (i) provide Replacement Product to Buyer (a) if the second Contract Year of a Performance Measurement Period is not the last year of an RPS compliance period, within ninety (90) days following the end of such Performance Measurement Period, or (b) if the second Contract Year of a Performance Measurement Period is the last year of an RPS compliance period, and Seller reasonably believes that it will not satisfy its Guaranteed Energy Production for such Performance Measurement Period, during the final three (3) months of the Performance Measurement Period, provided that, in either case, such deliveries do not impose additional costs upon Buyer, or (ii) (x) pay Buyer damages for any shortfall not otherwise remediated through the delivery of Replacement Product in an amount calculated in accordance with Exhibit G and (y) indemnify Buyer for any penalties incurred by Buyer due to non-compliance with its SB 350 Long-Term Contracting Obligations which are a direct result of Seller’s failure to achieve the Guaranteed Energy Production amount.

4.8 Reserved.

4.10 WREGIS. Seller shall, at its sole expense, but subject to Section 3.12, take all

actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 3.11(a), provided that Seller fulfills its obligations under Sections 4.10(a) through (f) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Subject to delivery of Replacement Product, Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that after the ninety (90) days attributed to the delay in the creation of WREGIS Certificates for such Deficient Month, Seller either (x) resolves the WREGIS

Certificate Deficit within an additional ninety (90) days or (y) provides Replacement Green Attributes (as defined in Exhibit G) within an additional ninety (90) days (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available the Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Facility Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Facility Energy.

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.** Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to Buyer.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements; *provided* that such agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, (ii) provide for separate metering of the Facility, and (iii) provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource IDs.

ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO or PTO meter requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. All meters will be operated pursuant to applicable CAISO-approved or PTO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for Electrical Losses and Station Use from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit O, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO or the PTO the meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller, or Seller's Scheduling Coordinator, and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the Facility Meter.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter

is inaccurate, it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; provided, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

ARTICLE 8

INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product within fifteen (15) Business Days after the end of the previous calendar month. Each invoice shall (a) reflect records of metered data, including metering and CAISO transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Facility Energy as read by the Facility Meter, the amount of Replacement Product delivered to Buyer (if any), the calculation of Facility Energy, and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) be accompanied by access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in the form of Exhibit P or such other form reasonably acceptable to Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice, provided, however, that Seller will give Buyer no less than ten (10) days' notice of any account change with respect to the place of payment. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice or the end of the prior monthly billing period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the prime rate published on the date of the invoice in The Wall Street Journal, or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State

Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a Facility Meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** 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 twenty-four (24) 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. 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 original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twenty-four (24) months after the invoice is rendered or subsequently adjusted, except in the event of intentional fraud or misrepresentation by the Seller or to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twenty-four month period. 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.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other 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 or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, 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.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect; *provided*, that Seller shall not be required to replenish the Development Security in the event that Buyer collects or draws down any portion thereof. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development

Security to Seller, 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 Commercial Operation Date, 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 in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, 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 Commercial Operation Date, 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, a Guaranty or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** 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, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 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.

Upon or any time after the occurrence and continuation 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 (in each case subject to the final sentence of this Section 8.9):

(a) 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 Law then in effect;

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

(c) Liquidate all 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.

8.10 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

8.11

(a)

(b)

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition.**

(a) “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless such inability is caused solely by a Force Majeure Event that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (vii) Seller’s inability to achieve Commercial Operation following the Guaranteed Commercial Operation Date unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period; or (viii) any action or inaction by any third party, including the PTO, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event; provided however, that for the avoidance of doubt, nothing in this subsection (viii) shall be interpreted to supersede Section 4(b) of Exhibit B.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder

in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take reasonable actions.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event and such termination shall not be deemed to be due to an Event of Default by either Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) 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 default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failures to achieve the Guaranteed Energy Production that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.7) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Sections 14.1, 14.2, or 14.3, as applicable; or

(vi) 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.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to achieve Commercial Operation within one hundred twenty (120) days after the Guaranteed Commercial Operation Date (as may be extended hereunder);

(iii) if not remedied within ten (10) Business Days after Notice thereof, the failure by Seller to deliver a reasonable Remedial Action Plan required under Section 2.4;

(iv) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least [REDACTED] of the Expected Energy amount for such period, and Seller fails to [REDACTED]

[REDACTED]

[REDACTED]

(v) if, in any two (2) consecutive Contract Year period during the Delivery Term, the Adjusted Energy Production amount is not at least sixty-five percent (65%) of the Expected Energy amount; [REDACTED]

[REDACTED]

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Performance Security amount within ten (10) Business Days in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Termination Payment;

(vii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an 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:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(viii) 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:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) 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;

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

(E) 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;

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

(G) 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, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

(c) with respect to Buyer as the Defaulting Party, the occurrence of any of the following:

(i) [REDACTED]

(ii) [REDACTED]

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that

terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)) subject to the limitations in Section 11.7, or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for the Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for the Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with the Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2(b) or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2(b) or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with the Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the

Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Damage Payment or Termination Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Damage Payment or Termination Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Damage Payment or Termination Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Damage Payment or Termination Payment, as applicable, shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from or arising out of any Event of Default of the other Party under this Agreement.

11.7 **Seller Pre-COD Liability Limitations.** Notwithstanding any other provision of this Agreement, Seller's aggregate liability under or arising out of a termination of this Agreement prior to the Commercial Operation Date shall be limited to an amount equal to the Damage Payment.

11.8 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may in connection with any new transaction (or any series of transactions entered into at the same time and) consummated after the Early Termination Date for a term of more than three (3) months, sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, 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 to Buyer 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 (i) ten (10) days of Buyer's receipt thereof, in the case of a transaction for a term length between three (3) and six (6) months, or (ii) forty-five (45) days of Buyer's receipt thereof, in the case of a transaction for a term length of more than six (6) months. For the avoidance of doubt, this Section 11.8 does not apply to Energy or Green Attributes associated with the Facility in excess of Buyer's Share of the Facility's output.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, (C) ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (D) AN ARTICLE 16 INDEMNITY CLAIM, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY 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. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE 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 DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.7, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. 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. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of New Mexico.

(f) Seller shall obtain and maintain any and all permits necessary to construct and operate the Facility.

(g) Seller shall maintain Site Control throughout the Delivery Term.

(h) Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that the disease designated as COVID-19 or the related virus designated SARS-CoV-2 have caused, or are reasonably likely to cause a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

13.2 **Buyer's Representations and Warranties** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) 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 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.)

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) [REDACTED]

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals and permits necessary for the operation of the Facility and for Seller to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Prevailing Wage.** Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals pertaining to employment discrimination laws and prevailing wage laws, in each case binding upon Seller or the Facility.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; provided, a Change of Control of Seller shall not require Buyer's consent if (a) the assignee or transferee is a Permitted Transferee, (b) the assignee or transferee is a Lender or its agent, or (c) the Change of Control occurs as a result of the exercise by a Lender or its agents of its rights or remedies under such Lender's financing agreements. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“**Collateral Assignment Agreement**”). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender (if Lender has provided the notice set forth in subsection (c) below) to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan’s implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period under this Agreement, and (ii) five (5) Business Days after Lender’s receipt of notice of such Event of Default from Buyer, indicating Lender’s intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material

amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date and capable of cure in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
- (ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), (i) if this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith, Lender shall have the right to elect within forty-five (45) days after such rejection or termination to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, and, promptly after Lender's written request, Buyer must enter into such replacement agreement with Lender or Lender's designee; or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any rejection of this Agreement in Seller's Bankruptcy or termination of this Agreement in connection therewith, promptly after Buyer's written request which must be made within forty-five (45) days after Buyer receives notice of such rejection or termination, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee must meet the definition of Permitted Transferee.

14.3 **Limited Assignment.**

(a) Notwithstanding anything to the contrary, Buyer may make a limited assignment to an entity that has creditworthiness that is equal to or better than the creditworthiness of Buyer ("**Prepayment Assignee**") of Buyer's right to receive Product (which shall not be for retail sale) and its obligation to make payments to Seller, subject to negotiation and execution of

an assignment agreement between and among Seller, Buyer, and Prepayment Assignee upon terms and conditions reasonably acceptable to Seller, including that the assignment shall be terminable by Seller if Prepayment Assignee fails to make timely payment of amounts due under this Agreement.

(b) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law) if, and only if (i) the assignee is a Permitted Transferee; (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; (iii) other than in connection with a Change of Control, Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment; and (iv) Seller certifies that such Person meets the definition of a Permitted Transferee. Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3(b) shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** 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 laws. 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.

15.2 **Venue.** The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or, if such federal courts disclaim jurisdiction, the courts of the State of California, in either case sitting in San Diego County, California.

15.3 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

15.4 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16 INDEMNIFICATION

16.1 **Mutual Indemnity.**

(a) Each Party (the “**Indemnifying Party**”) agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, employees and representatives (each an “**Indemnified Party**” and collectively, the “**Indemnified Group**”) from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees, (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees or agents, or (ii) for third-party claims resulting from the Indemnifying Party’s breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement (collectively, “**Indemnifiable Losses**”).

(b) Nothing in this Section shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Notice of Claim.** Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly Notify the Indemnifying Party in writing of any damage, claim, loss, liability or expense which Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 (“**Claim**”). The Notice is referred to as a “Notice of Claim”. A Notice of Claim will specify, in reasonable detail, the facts known to Indemnified Party regarding the Indemnifiable Loss.

16.3 **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, in such case, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.4 **Defense of Claims.** If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; provided, however, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnified Party that Indemnified Party believes

Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.

16.5 **Subrogation of Rights.** Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.6 **Rights and Remedies are Cumulative.** Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

16.7 **Environmental Indemnity.** Seller shall indemnify, defend and hold harmless Buyer, and any and all of its employees, officials and agents from and against any third party liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of or are in any way attributable to, and or caused by (a) any Release on the Site caused by Seller or Seller's contractors or service providers or (b) any claim or legal proceeding pursuant to Environmental Law by any third party with regard to any violation or alleged violation of any Environmental Laws by Seller or the Seller's contractors or service providers. For the purposes hereof, (i) "**Release**" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment of Hazardous Materials introduced to the Facility by Seller or Seller's contractors or service providers in violation of any Environmental Laws that are required to be investigated, remediated or otherwise cleaned up by a

Governmental Authority; and (ii) “**Environmental Laws**” shall mean all federal, state, and local laws, statutes, ordinances, and regulations now or hereafter in effect, and in each case as amended, and any binding judicial or administrative interpretation thereof relating to the protection of human health, safety, the environment and natural resources (including ambient air, surface water, groundwater, wetlands, land, surface or subsurface strata, wildlife, aquatic species and vegetation), including laws and regulations relating to Releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, with a limit of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), including contractual liability covering Seller’s obligations under this Agreement and naming Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller.

(b) **Employer’s Liability Insurance.** Seller, if it has employees, shall maintain Employers’ Liability insurance of One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) **Workers Compensation Insurance.** Seller, if it has employees, shall maintain at all times during the Contract Term workers’ compensation and employers’ liability insurance coverage in accordance with applicable requirements of the law of the state in which the work is being performed.

(d) **Business Auto Insurance.** Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. 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.

(e) **Umbrella Liability Insurance.** Seller shall maintain or cause to be maintained an umbrella liability policy with a limit of liability of Ten Million Dollars (\$10,000,000) per occurrence and in the aggregate. Such insurance shall be excess of the General Liability, Employer’s Liability, and Business Auto Insurance coverages and shall contain standard cross-liability and severability of interest provisions. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Seller may choose any combination of primary and excess or umbrella liability policies to meet the insurance limits required under Sections 17.1(a), 17.1(b) and 17.1(d) above.

(f) **Construction All-Risk Insurance.** Seller shall maintain or cause to be maintained during the construction of the Facility equipment and prior to the Commercial

Operation Date, construction all-risk form property insurance covering the Facility during such construction periods.

(g) Pollution Liability Insurance. Seller shall maintain or cause to be maintained at all times during the Contract Term, Pollution Liability Insurance with a limit of not less than Two Million Dollars (\$2,000,000) each occurrence for bodily injury and property damage. Such insurance shall cover 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. The policy will endorse San Diego Community Power as an additional insured.

(h) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard “all risk” property insurance coverage in amounts that are not less than the actual replacement value of the Facility, provided, however, with respect to property insurance for natural catastrophes, such coverage shall be in amounts required by Seller’s Lender.

(i) Subcontractor Insurance. Seller shall require all of its major subcontractors to carry the same levels of insurance as Seller, with the exception of the insurance required pursuant to Sections 17.1(e) (Umbrella limit shall be commensurate with each subcontractor’s scope of work), 17.1(f), 17.1(g) and 17.1(h). All subcontractors shall name Seller as an additional insured to commercial general liability insurance.

(j) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such Seller coverage under Sections 17.1(a) through 17.1(h), with the exception of Construction All Risk Insurance and Property Insurance. Certificates of insurance evidencing Construction All Risk Insurance shall be provided the later of the Effective Date or the commencement of any physical construction on Site and evidence of Property Insurance shall be provided prior to the Commercial Operation Date and at every renewal thereafter. These policies shall specify that Buyer shall be given at least thirty (30) days prior Notice by insurer in the event of any cancellation or termination of coverage, except if such cancellation or termination of coverage is due to non-payment of premium, in which case insurer shall provide Buyer with ten (10) days prior Notice, however in the event any insurer is not willing or able to provide such notice to Buyer then the responsibility for providing such notice shall be borne by Seller. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(k) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer’s remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller

shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 18

CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) this Agreement and pricing and other commercially-sensitive or proprietary information provided to Buyer in connection with the terms and conditions thereof, and proposals and negotiations related thereto, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Except as permitted in this Article 18, neither Party shall disclose Confidential Information to a third party (other than the Party’s members, employees, lenders, counsel, accountants, directors or advisors, who have a need to know such information and have agreed to keep such terms confidential), except upon the written consent of the Disclosing Party. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure; provided, that the Receiving Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. Each Party hereto acknowledges and agrees that this Agreement and information and documentation provided in connection with this Agreement may be subject

to the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth in this Article 18. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Article 18 or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, or trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 **Public Records Act.** Seller and Buyer acknowledge and agree that this Agreement and any documents, notices or confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Cal. Government Code § 6250 et seq.). Buyer acknowledges that Seller may submit information to Buyer that Seller considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code § 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Cal. Government Code §§ 6254 and 6255). Seller acknowledges that Buyer may submit to Seller information that Buyer considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement (“**Requestor**”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information” and the disclosing Party, the “**Disclosing Party**”), the Party receiving such request (the “**Receiving Party**”) as soon as practical, and no less than five (5) Business Days following the Receiving Party’s receipt of such request, shall notify the Disclosing Party of the particulars of the request. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action within ten (10) Business Days after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.

18.6 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press

release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto, constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. 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 Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.**Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.**No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement or, to the extent set forth herein, any Lender) or Indemnified Party.**Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.**Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party 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). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.**Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be

deemed an original. The Parties may rely on electronic, facsimile or scanned signatures as originals.

19.8 **Electronic Delivery.** Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.**Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.**No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement. **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

19.13 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15.

[Signatures on following page]

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

**DURAN MESA LLC, a Delaware
limited liability company**

By: _____
Name: _____
Title: _____

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

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

The Facility Description provided herein reflects the expectation of the Parties for the Facility and the Site as of the Effective Date. Seller shall not modify the “Site Name” and “Site Location” within the APNs set forth below without Buyer’s prior written consent not to be unreasonably withheld.

Site Name: Duran Mesa Wind project

Site includes all or some of the following APNs:

1. 1086011034226000000 – William W. & Kay Burnett, confirmed
2. 1078011285432000000 – Holleyman Family Trust, confirmed
3. 1077005332465000000 – Holleyman Family Trust, confirmed
4. 1076004397111000000 – Holleyman Family Trust, confirmed
5. 1079013284265000000 – Holleyman Family Trust, confirmed
6. 1078008510317000000 – Holleyman Family Trust, confirmed
7. 1080011370373000000 – William S. & Sharolyn Leibold, confirmed
8. 1081013262136000000 - William S. & Sharolyn Leibold, confirmed
9. 1080010056225000000 – Sharp Ranch, confirmed
10. 1080008549534000000 – Sharp Ranch, confirmed
11. State Lands Business Lease (“SLBL”) number

EW-0061 – correct, includes:

Township 2N R14E

Section 2: All

Section 16: All

Township 3N Range 14E

Section 36: All

County: Torrance County, New Mexico

Type of Facility: Wind

Nameplate Capacity of Facility: 105 MW

Guaranteed Capacity: 50 MW

Delivery Point: Willow Beach or, at any time and from time to time, any other CAISO node

P-node: APN-WILOWBCH_6_ND001

Facility Meter: See Exhibit O

Facility Interconnection Point:

Participating Transmission Owner: Western Spirit Transmission LLC prior to the transfer of the Western Spirit Transmission Line to Public Service Company of New Mexico, and thereafter Public Service Company of New Mexico.

Facility City: Duran, New Mexico

Facility Zip Code: 88301

Facility Latitude: 34°23'26.35"N

Facility Longitude: 105°29'31.88"W

Balancing Authority Interconnection: Public Service Company of New Mexico

Interconnection Queue Position: IA-PNM-2020-09

EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. **Major Project Development Milestones.**

(a) The engineering, procurement, and construction contract for the Facility has been executed and the full notice to proceed has been issued (“**Construction Start**”). Seller shall deliver to Buyer on the Effective Date a certificate substantially in the form attached as Exhibit J hereto, certifying that Construction Start has occurred and identifying the “**Construction Start Date**.”

2. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when (i) Seller has provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”), and (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation. Seller achieving Commercial Operation in accordance with this Agreement shall not limit Seller’s ability to continue construction and development of other portions of the Facility; provided, that such continued construction and development shall not materially interfere with or limit either Parties’ rights or obligations hereunder, and Seller shall provide Buyer from time to time with a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I to reflect any changes to the Installed Capacity of the Facility.

(a) Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least thirty (30) days before the anticipated Commercial Operation Date.

(b) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date, not to exceed a total of sixty (60) days of extensions by such payment of Commercial Operation Delay Damages. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the earliest of (i) the Commercial Operation Date, (ii) the Commercial Operation Delay Damages equal the amount of the Development Security, or (iii) termination of this Agreement. On or before the tenth (10th) of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Commercial Operation Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default under Section 11.2(b)(ii) and receive a Damage Payment upon exercise of Buyer’s rights pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within sixty (60) days after the Guaranteed Commercial

Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates.** The Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances:

- (a) a Force Majeure Event occurs; or
- (b) a delay in Commercial Operation that is caused by a Transmission Provider (e.g., the CAISO, PNM, APS, TEP, Western Spirit) or transmission owner (e.g., PNM, APS, TEP, Western Spirit) despite the exercise of diligent and commercially reasonable efforts by Seller; or
- (c) Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under Sections 4(a) and 4(b) above under the Development Cure Period (other than the extensions granted pursuant to clause 4(c) above) shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(c) above) shall not exceed one hundred eighty (180) days. Notwithstanding anything to the contrary, no extension under the Development Cure Period shall be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required in the next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is at least equal to the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to the product of (i) Two Hundred Fifty Thousand Dollars (\$250,000) and (ii) each MW (or portion thereof) that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

6. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) The Contract Price shall be equal to the sum of the Energy Price and the REC Price, less the CAISO Credit.

Contract Price shall be calculated as follows:

Contract Price = (Energy Price + REC Price) - CAISO Credit

Where:

“**CAISO Credit**” means the Energy Price paid by the CAISO for the energy associated with the Product.

“**Energy Price**” means the applicable Day-Ahead Market, Fifteen Minute Market, or Real-Time Market LMP clearing at the Delivery Point, as published by the CAISO, per MWh of energy delivered.

“**REC Price**” is equal to [REDACTED].

(b) For each month during the Delivery Term, (i) Buyer shall pay Seller an amount equal to the Contract Price multiplied by the Facility Energy and any Replacement Product delivered during such month and (ii) Seller shall be entitled to retain all revenues associated with delivery of the Facility Energy and the Energy component of Replacement Product to the CAISO in full satisfaction of Buyer’s payment obligation for the Facility Energy component of the Product and/or Replacement Product. The Parties acknowledge that the actual CAISO revenues received by Seller may be greater than or less than the Energy Price but agree that the CAISO Credit shall fully offset the Energy Price component of the Contract Price, and that no amount associated with the Energy Price shall be payable to or from Buyer hereunder.

(c) Economic Curtailment. Buyer shall have no obligation to pay for Product not delivered due to Economic Curtailment.

(d) Excess Contract Year Deliveries Over 110%. If, in any Contract Year, the amount of Facility Energy and any Replacement Product delivered exceeds one hundred ten percent (110%) of the Expected Energy for such Contract Year, then Buyer shall have no obligation to purchase any Product associated with Facility Energy in excess of such threshold. Seller may sell such Product in excess of one hundred ten percent (110%) of the Expected Energy for such Contract Year to any third party and shall retain all revenues and bear all costs associated with any such sale; provided that prior to any such third party sale, Seller shall send to Buyer a notice of proposed sale and Buyer may elect to purchase the incremental Product under the terms of this Agreement. If Buyer declines to purchase the incremental Product, or fails to respond to Seller’s notice of proposed sale agreeing to purchase the incremental output under the terms of this Agreement within three (3) Business Days of Seller’s notice of proposed sale, Seller may proceed to make sales of the incremental Product to any third party.

(e) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours (“**Excess MWh**”), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0).

(f) Curtailed Payments. Seller shall receive no compensation from Buyer for Facility Energy provided in violation of a Curtailment Order.

(g) Tax Credits. The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D
RESERVED

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Facility description.
3. Site plan of the Facility.
4. Gantt chart schedule showing progress on achieving each of the Milestones.
5. Description of any material planned changes to the Facility or the site.
6. Summary of activities during the previous calendar quarter or month, as applicable.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. If applicable, prevailing wage reports as required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Any other documentation reasonably requested by Buyer.

EXHIBIT F

AVERAGE EXPECTED ENERGY

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
										0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the lesser of (a) market value of Replacement Green Attributes determined in a commercially reasonable manner; and (b) fifty dollars (\$50) per MWh.

D = the Contract Price for the Contract Year, in \$/MWh

“Adjusted Energy Production” shall mean the sum of the following: Facility Energy + Replacement Product + Lost Output.

“Lost Output” has the meaning given in Section 4.7 of the Agreement.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same compliance vintage as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by the undersigned, a licensed professional engineer and duly authorized representative of _____ in its capacity as independent engineer ("**Engineer**") to San Diego Community Power, a California joint powers authority ("**Buyer**") pursuant to the [agreement between Seller and Engineer] and in connection with that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Duran Mesa LLC ("**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] , Engineer hereby certifies and represents to Buyer the following:

1. Wind turbines with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity have been installed.
2. Testing and commissioning of each wind turbine referred to in paragraph one (1) above has been completed in accordance with the turbine supply agreement and each such wind turbine has delivered electricity to the Point of Interconnection specified in the Interconnection Agreement.
3. Authorization to parallel the Facility was obtained by the Participating Transmission Owner on [DATE] .
4. The Participating Transmission Owner has provided documentation supporting full unrestricted release for Commercial Operation on [DATE] .

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by the undersigned, a licensed professional engineer and duly authorized representative of _____ in its capacity as independent engineer ("**Engineer**") to San Diego Community Power, a California joint powers authority ("**Buyer**") pursuant to the [agreement between Seller and Engineer] and in connection with that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Duran Mesa LLC ("**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.

I hereby certify the following:

[] wind turbines with a nameplate capacity of [] ("**Installed Capacity**") have been installed, and testing and commissioning of each such wind turbine has been completed in accordance with the turbine supply agreement and each such wind turbine has delivered electricity to the Point of Interconnection specified in the Interconnection Agreement.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by Duran Mesa LLC ("**Seller**") to San Diego Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**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 the following:

1. Construction Start (as defined in Exhibit B of 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;
2. the Construction Start Date occurred on _____ (the "Construction Start Date"); and
3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: _____.

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

DURAN MESA LLC

By: _____

Its: _____

Date: _____

EXHIBIT K₁

FORM OF LETTER OF CREDIT



MUFG Bank, Ltd.

New York Branch
1251 Avenue of the Americas
New York, NY 10020
Tel: 201-413-8044
Fax: 201-521-2312
SWIFT: BOTKUS33XXX

**Irrevocable
Standby Letter of Credit No.:**

DATE OF ISSUE:

IRREVOCABLE STANDBY LETTER OF CREDIT NO.:

BENEFICIARY:

APPLICANT:
WESTERN SPIRIT FINCO LLC
ON BEHALF OF DURAN MESA LLC
C/O PATTERN ENERGY GROUP LP
1088 SANSOME STREET
SAN FRANCISCO, CA 94111
ATTN: GENERAL COUNSEL

AMOUNT/CURRENCY:

DATE AND PLACE OF EXPIRY:

AT THE REQUEST OF, AND FOR THE ACCOUNT OF, WESTERN SPIRIT FINCO LLC, A DELAWARE LIMITED LIABILITY COMPANY, ON BEHALF OF DURAN MESA LLC, A DELAWARE LIMITED LIABILITY COMPANY ('APPLICANT'), WE, MUFG BANK, LTD., NEW YORK BRANCH, AT 1251 AVENUE OF THE AMERICAS, NEW YORK, NY 10020,

¹ Seller note: Under review.

ATTN: TRADE SERVICE OPERATIONS/STANDBY LC SECTION ('ISSUER'), HEREBY ESTABLISH IN FAVOR OF [_____] ('BENEFICIARY'), AT [____], IN RESPECT OF OBLIGATIONS OF DURAN MESA LLC, OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [_____] (THIS 'LETTER OF CREDIT'), WHEREBY, SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN, BENEFICIARY IS HEREBY AUTHORIZED TO DRAW ON US, BY SIGHT, BY ITS DRAWING STATEMENT AS PROVIDED HEREIN, FOR AN AGGREGATE AMOUNT UP TO, BUT NOT EXCEEDING, [_____] (THE 'FACE AMOUNT').

WE HAVE BEEN ADVISED THAT THIS LETTER OF CREDIT IS IRREVOCABLE AND IS ESTABLISHED AS DEVELOPMENT SECURITY (UNDER AND AS DEFINED IN THE AGREEMENT, AS DEFINED BELOW) PURSUANT TO THAT CERTAIN RENEWABLE POWER PURCHASE AGREEMENT, DATED AS OF [____], BY AND BETWEEN DURAN MESA LLC AND BENEFICIARY (THE 'AGREEMENT').

THIS LETTER OF CREDIT SHALL BE EFFECTIVE IMMEDIATELY AND SHALL EXPIRE ON [____], WHICH IS ONE (1) YEAR AFTER THE ISSUANCE DATE OF THIS LETTER OF CREDIT, OR ANY EXPIRATION DATE AUTOMATICALLY EXTENDED IN ACCORDANCE WITH THE TERMS HEREOF (THE 'EXPIRATION DATE').

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED, WITHOUT AMENDMENT, FOR ADDITIONAL ONE YEAR PERIODS FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE, BUT IN NO EVENT TO AN EXPIRATION DATE LATER THAN [_____] (THE 'FINAL EXPIRATION DATE'), UNLESS AT LEAST NINETY (90) DAYS PRIOR TO THE EXPIRATION DATE WE SEND NOTICE IN WRITING TO YOU VIA HAND DELIVERY OR COURIER MAIL SERVICE AT THE ABOVE ADDRESS, THAT WE ELECT NOT TO AUTOMATICALLY EXTEND THIS LETTER OF CREDIT FOR ANY ADDITIONAL PERIOD.

ON OR BEFORE THE EXPIRATION DATE OF THIS LETTER OF CREDIT, YOU MAY DRAW ON US HEREUNDER FOR UP TO THE FULL UNUTILIZED AMOUNT AVAILABLE AS OF THE DATE OF DRAWING ON THIS LETTER OF CREDIT.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED UNDER THIS LETTER OF CREDIT (PROVIDED THAT THE CUMULATIVE AGGREGATE AMOUNT THAT MAY BE DEMANDED UNDER THIS LETTER OF CREDIT SHALL NOT EXCEED THE FACE AMOUNT), AND THIS LETTER OF CREDIT SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ANY CONTINUING BALANCE ON OR BEFORE THE THEN-CURRENT EXPIRATION DATE.

FUNDS UNDER THIS LETTER OF CREDIT SHALL BE AVAILABLE FOR PAYMENT AT SIGHT TO THE BENEFICIARY UPON PRESENTATION TO US OF A DATED DRAWING CERTIFICATE, IN THE FORM OF EXHIBIT A HERETO (WHICH IS AN INTEGRAL PART OF THIS LETTER OF CREDIT), PURPORTEDLY SIGNED BY THE BENEFICIARY'S DULY AUTHORIZED OFFICER.

THE DRAWING CERTIFICATE MAY BE PRESENTED BY PHYSICAL DELIVERY OR OVERNIGHT COURIER TO OUR ADDRESS AT MUFG BANK, LTD., NEW YORK BRANCH, 1251 AVENUE OF THE AMERICAS, NEW YORK, NY 10020, ATTN: TRADE SERVICE OPERATIONS/STANDBY LC SECTION.

DRAWING(S) UNDER THIS LETTER OF CREDIT MAY ALSO BE PRESENTED TO US BY FACSIMILE TRANSMISSION. PRESENTATION OF DOCUMENTS TO EFFECT A DRAW BY FACSIMILE MUST BE MADE TO THE FOLLOWING FACSIMILE NUMBER (201) 521-2336/2312; PROVIDED HOWEVER, THAT A FAX DRAWING WILL NOT BE EFFECTIVELY PRESENTED UNTIL YOU CONFIRM BY TELEPHONE OUR RECEIPT OF SUCH FAX DRAWING BY CALLING US AT TELEPHONE NUMBER (201) 413-8823 ATTN. MS. ANTONINA BONDI OR AT TELEPHONE NO. (201) 413-8160 ATTN. RUTH DIOQUINO. IN THE EVENT OF A PRESENTATION VIA FACSIMILE TRANSMISSION, NO MAIL CONFIRMATION IS NECESSARY AND THE FACSIMILE TRANSMISSION WILL CONSTITUTE THE OPERATIVE DRAWING DOCUMENTS.

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.

WE HEREBY AGREE THAT ANY DRAWING CERTIFICATE DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED BY US UPON DELIVERY OF THE ABOVE-SPECIFIED DRAWING CERTIFICATE, IF PRESENTED ON OR BEFORE THE EXPIRATION DATE AS SPECIFIED HEREIN. 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.

AS STIPULATED HEREIN, "BUSINESS DAY" SHALL MEAN ANY DAY OTHER THAN A SATURDAY, SUNDAY OR A DAY ON WHICH BANKING INSTITUTIONS IN THE STATE OF NEW YORK ARE AUTHORIZED OR REQUIRED BY LAW TO CLOSE. IF ANY DRAWING OR THE DOCUMENTATION PRESENTED IN CONNECTION THEREWITH, DOES NOT CONFORM TO THE TERMS AND CONDITIONS HEREOF, WE WILL ADVISE YOU OF THE SAME AND GIVE THE REASONS FOR SUCH NON-CONFORMANCE.

THIS LETTER OF CREDIT IS ISSUED SUBJECT TO THE RULES OF THE 'INTERNATIONAL STANDBY PRACTICES 1998', INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ('ISP98') AND, AS TO MATTERS NOT ADDRESSED BY ISP98, SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF STATE OF NEW YORK.

NOTWITHSTANDING ANY REFERENCE IN THIS LETTER OF CREDIT TO ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS (OTHER THAN AS SET FORTH IN THE IMMEDIATELY PRIOR PARAGRAPH), THIS LETTER OF CREDIT CONTAINS THE

ENTIRE AGREEMENT BETWEEN BENEFICIARY AND ISSUER RELATING TO THE OBLIGATIONS OF ISSUER HEREUNDER.

ALL NOTICES TO BENEFICIARY SHALL BE IN WRITING AND ARE REQUIRED TO BE SENT BY CERTIFIED LETTER, COURIER MAIL SERVICE OR DELIVERED IN PERSON TO: [_____]. 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.

ALL PARTIES TO THIS LETTER OF CREDIT ARE ADVISED THAT THE U.S. GOVERNMENT HAS IN PLACE CERTAIN SANCTIONS AGAINST CERTAIN COUNTRIES, TERRITORIES, INDIVIDUALS, ENTITIES, AND VESSELS. ISSUER ENTITIES, INCLUDING BRANCHES AND, IN CERTAIN CIRCUMSTANCES, SUBSIDIARIES, ARE/WILL BE PROHIBITED FROM ENGAGING IN TRANSACTIONS OR OTHER ACTIVITIES WITHIN THE SCOPE OF APPLICABLE SANCTIONS.

PLEASE SEND ALL CLAIMS AND CORRESPONDENCE TO THE FOLLOWING ADDRESS:

MUFG BANK, LTD., NEW YORK BRANCH
1251 AVENUE OF THE AMERICAS
NEW YORK, NY 10020
ATTN: TRADE SERVICE OPERATIONS/STANDBY LC SECTION

FOR ANY QUERIES, PLEASE CONTACT TRADE SERVICE OPERATIONS/STANDBY LC SECTION AT: 201) 413-8823 ATTN. MS. ANTONINA BONDI OR (201) 413-8160 ATTN. RUTH DIOQUINO EMAIL: IOD_SBLC@US.MUFG.JP AND ABONDI@US.MUFG.JP

VERY TRULY YOURS,

MUFG BANK, LTD.
NEW YORK BRANCH

AUTHORIZED SIGNATORY'

EXHIBIT A
DRAWING CERTIFICATE

TO: MUFG BANK, LTD., NEW YORK BRANCH
1251 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10020
ATTN. TRADE SERVICE OPERATIONS/ STANDBY LC SECTION

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [____], DATED AS OF [____], ISSUED BY MUFG BANK, LTD., NEW YORK BRANCH TO [____] (“LETTER OF CREDIT”) CAPITALIZED TERMS USED BUT NOT DEFINED IN THIS DRAWING CERTIFICATE HAVE THE MEANINGS ASCRIBED TO THEM IN THE LETTER OF CREDIT. THIS IS A DRAWING CERTIFICATE UNDER THE ABOVE-MENTIONED LETTER OF CREDIT.

I, [____], AN AUTHORIZED OFFICER OF [____], DO HEREBY CERTIFY THAT:

DURAN MESA LLC AND BENEFICIARY ARE PARTY TO THAT CERTAIN RENEWABLE POWER PURCHASE AGREEMENT, DATED AS OF [____] (THE “AGREEMENT”).

[CHOOSE ONLY ONE OF THE FOLLOWING]:

(1) BENEFICIARY IS MAKING A DRAWING UNDER THE LETTER OF CREDIT, IN THE AMOUNT OF [____] U.S. DOLLARS (U.S. \$[____]), BECAUSE (A) A SELLER EVENT OF DEFAULT (AS SUCH TERM IS DEFINED IN THE AGREEMENT) HAS OCCURRED OR (B) AN OCCASION PROVIDED FOR IN THE AGREEMENT WHEREBY BENEFICIARY IS AUTHORIZED TO DRAW ON THE LETTER OF CREDIT HAS OCCURRED.

(2) BENEFICIARY IS MAKING A DRAWING UNDER THE LETTER OF CREDIT, IN THE AMOUNT OF [____] U.S. DOLLARS (U.S. \$[____]), WHICH EQUALS THE FULL AVAILABLE AMOUNT UNDER THE LETTER OF CREDIT, BECAUSE, WHERE DURAN MESA LLC IS REQUIRED TO MAINTAIN THE LETTER OF CREDIT IN FULL FORCE AND EFFECT BEYOND THE EXPIRATION DATE OF THE LETTER OF CREDIT, DURAN MESA LLC HAS FAILED TO PROVIDE BENEFICIARY WITH A REPLACEMENT LETTER OF CREDIT OR OTHER ACCEPTABLE INSTRUMENT WITHIN THIRTY (30) DAYS PRIOR TO SUCH EXPIRATION DATE.

IN ACCORDANCE WITH THE TERMS OF THE LETTER OF CREDIT AND THE

AGREEMENT, BENEFICIARY IS ENTITLED TO AND HEREBY DEMANDS PAYMENT OF [_____] UNITED STATES DOLLARS (U.S.\$[_____]), SUCH AMOUNT TO BE PAID TO BENEFICIARY BY WIRE TRANSFER IN IMMEDIATELY AVAILABLE FUNDS TO:

[INSERT WIRE INSTRUCTIONS]

WHICH, THE [_____] CERTIFIES IT IS ENTITLED TO UNDER THE AGREEMENT.

COMMUNICATIONS TO BENEFICIARY CONCERNING THIS DRAWING CERTIFICATE MAY BE MADE AT THE FOLLOWING TELEPHONE NUMBER: [_____] , AND FAX NUMBER: [_____].

IN WITNESS WHEREOF, BENEFICIARY, THROUGH ITS AUTHORIZED OFFICER, HAS EXECUTED AND DELIVERED THIS DRAWING CERTIFICATE ON THIS DAY OF [_____], 20[____].

[_____] BY: _____
NAME:
TITLE:

EXHIBIT L2

FORM OF GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [_____] (the “**Effective Date**”) by and between [_____] a [_____] (“**Guarantor**”), and San Diego Community Power, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

Recitals

- A. Buyer and Duran Mesa LLC, a Delaware limited liability company (“**Seller**”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “**PPA**”) dated as of [____], 2021.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “**Guaranteed Amount**”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$ _____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to

2 Seller note: Under review.

the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "**Payment Demand**") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer.

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*]/[*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or

affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by e-mail, such notice shall be deemed received when the confirmation of receipt thereof is received by the party giving the notice. Any party may change its address or e-mail address to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

[]

Attn: []

E-mail: []

If delivered to Guarantor, to it at

[]

Attn: []

E-mail: []

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Diego County, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force

and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT M
RESERVED

EXHIBIT N

NOTICES

Duran Mesa LLC ("Seller")	San Diego Community Power, a California joint powers authority ("Buyer")
All Notices: Street: 1088 Sansome St. City: San Francisco, CA Attn: General Counsel Phone: (415) 283-4000 Email: generalcounsel@patternenergy.com	All Notices: San Diego Community Power 815 E Street, Suite 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:	Reference Numbers: Duns: Federal Tax ID Number: [REDACTED]
Invoices: Attn: Treasurer Phone: (415) 283-4000 E-mail: Treasury@patternenergy.com	Invoices: Attn: SDCP Settlements Phone: (619) 880-6545 E-mail: settlements@sdcommunitypower.org
Scheduling: Attn: 24/7 Operations Control Center Phone: (713) 308-4242 E-mail: patternocc@patternenergy.com	Scheduling: Attn: Kara Whillock, Tenaska Power Services Co. Phone: (972) 333-6122 Facsimile: (817) 303-1104 E-mail: kwhillock@tnsk.com
Confirmations: Attn: Phone: Facsimile: E-mail:	Confirmations: Attn: Phone: Facsimile: E-mail:
Payments: Attn: Phone: Facsimile: E-mail:	Payments: Attn: Michael Maher Phone: (415) 526-3020 E-mail: mmaher@maher CPA.com
Wire Transfer: BNK: ABA: ACCT:	Wire Transfer: BNK: River City Bank ABA: ACCT:

Duran Mesa LLC (“Seller”)	San Diego Community Power, a California joint powers authority (“Buyer”)
With additional Notices of an Event of Default to: Attn: Andrew Murray Street: 1088 Sansome St. City: San Francisco, CA Phone: (415) 283-4000 E-mail: andy.murray@patternenergy.com	With additional Notices of an Event of Default to: Ryan Baron, Best Best & Krieger LLP 18101 Von Karman Ave., Suite 1000 Irvine CA 92612 Phone: (949) 263-6568 Email: ryan.baron@bbklaw.com
Emergency Contact: Attn: 24/7 Operations Control Center Phone: (713) 308-4242 E-mail: patternocc@patternenergy.com	Emergency Contact: Attn: Phone: Facsimile: E-mail:

EXHIBIT O
METERING DIAGRAM
SELLER TO PROVIDE



SAN DIEGO COMMUNITY POWER

Staff Report – Item 15

To: San Diego Community Power Board of Directors

From: Nelson Lomeli, Program Manager
Byron Vosburg, Director of Power Services

Via: Bill Carnahan, Interim Chief Executive Officer

Subject: Approve Updates to the Feed-In Tariff (FIT) Schedule and Delegate Authority to the CEO or their Designee to Execute and Amend the FIT Power Purchase Agreements

Date: December 16, 2021

RECOMMENDATION

Approve updates to the Feed-In Tariff (FIT) Schedule and delegate authority to the CEO or their designee to execute and amend the Power Purchase Agreements entered as part of the FIT program.

BACKGROUND

A Feed-in Tariff, or “FIT”, is a standard offer power purchase program, which is typically implemented to incentivize locally situated, small-scale renewable energy projects that are not necessarily price competitive with other utility-scale alternatives (often developed in optimal resource areas with much larger project footprints).

The San Diego Community Power (SDCP) Board of Directors (Board) approved the adoption of a FIT Schedule, application and update to the Inclusive and Sustainable Workforce Policy on January 28, 2021.

The FIT Schedule adopted by the Board on January 28, 2021 established the following eligibility requirements:

- Renewable generating resources must be California Energy Commission-certified;
- Participating projects must be less than 1MW_{AC} in size;
- Overall initial program cap is 3 MW;
- Projects must be located within SDCP’s territory;
- Renewable energy certificates produced by FIT projects will be transferred to and owned by SDCP;

- All FIT projects will deliver under a non-negotiable 20-year Power Purchase Agreement (PPA);
- Base FIT price shall be \$80/MWh;
- Bonus Incentives shall be available, subject to pertinent eligibility criteria, for the following project attributes, and payable during the first five (5) years of each delivery term:
 - Local Business: \$0.0025/kWh (\$2.50/MWh)
 - Previously Developed Site: \$0.0025/kWh (\$2.50/MWh)
 - Sited within a Community of Concern: \$0.0025/kWh (\$2.50/MWh)

As a reminder, any supply arranged through a FIT program will complement other wholesale renewable energy purchases secured by SDCP. Benefits of a FIT program are expected to include support for local businesses, generalized local economic development benefits, increased utilization of local renewable energy resources and highly visible project development opportunities that should become centerpieces of SDCP's marketing collateral and communication campaigns.

ANALYSIS AND DISCUSSION

Staff is proposing revisions and updates to the Schedule to improve the Feed-In Tariff program and allow SDCP to procure electricity from local, small-scale energy providers that will further reduce greenhouse gas emissions. The proposed changes would encourage projects that deliver energy during peak periods when natural gas "peaker" plants are coming online and projects that are paired with energy storage.

Staff proposes to increase the overall program cap in recognition of the addition of two new members to the Authority and thus an increased demand for energy and increased capacity. The Board had previously discussed a higher program capacity cap.

The proposed changes are as followed:

- Overall FIT program cap is set at 6 MW_{AC} (increased from 3 MW_{AC})
- Base FIT price based on the Time-of-Delivery
 - \$120/MWh during Premium Hours (7:00 PM – 12:00AM)
 - \$60/MWh during all other hours

Staff proposing adding three Security Deposits:

1. **Reservation Security Deposit** of \$5 for every kilowatt (kW) of the proposed project that an applicant is submitting to SDCP that is due at the time of application.
 - The Reservation Security Deposit will help protect the program queue from project applications that are not viable and ensure that the projects that are ready can be considered by SDCP.



- The Security Reservation Deposit is returned to the applicant when Commercial Operation is achieved by crediting the full amount on the first payment to the applicant/seller.
 - If the project does not reach Commercial Operation, SDCP retains the Reservation Security Deposit in full.
2. **Development Security Deposit** of \$5 per kilowatt (kW) of the proposed project that an applicant is submitting to SDCP that is due at the time of PPA execution.
- The Development Security Deposit will ensure that projects achieve their Commercial Operation Date as expected and contracted.
 - The Development Security Deposit is returned when Commercial Operation is achieved, otherwise it is retained by SDCP in full.
3. **Performance Security Deposit** of \$10 per kilowatt (kW) of the proposed project that an applicant is submitting to SDCP that is due at the Commercial Operation Date.
- The Performance Security Deposit will help protect SDCP and our customers from projects that do not deliver the contracted product.
 - SDCP will hold the Performance Security Deposit for the term of the PPA and be returned in full once complete.
 - In the event that a product is not delivered, SDCP will retain the Performance Security Deposit.

To expedite processing and efficient tracking of applications, Staff will be moving the application to an online system and not accepting paper applications. Additionally, because these agreements will be standard across all projects, non-negotiable, with pricing information and capacity publicly available as part of this program, Staff is requesting that the Board delegate authority to the CEO or their designee to execute and amend the non-negotiable FIT agreements. A copy of the standard FIT agreement is attached. Due to permitting, interconnection, and supply-chain issues, Staff anticipates the need to amend the contract to extend the Commercial Operation Date on a case-by-case basis. All agreements and amendments will be reviewed by Legal Counsel prior to execution.

All other terms of the FIT schedule will stay the same.

COMMITTEE REVIEW

This item was reviewed by the Community Advisory Committee on December 9, 2021. The Committee voted unanimously to support Staff's proposed updates to the program. They asked questions regarding whether it was appropriate to increase the cap from 3MW to 6MW given the financial implications. Staff believes that due to SDCP's size, the increased load from the new member jurisdictions increase in the cap, and the length of time before projects come online, it is appropriate to increase the cap. It is in line with the size of other FIT programs from other CCAs.

FISCAL IMPACT

As identified, total power supply costs ranging from \$420,000 to \$473,000 per year; incremental power supply costs ranging from approximately \$180,000 to \$240,000 per year (relative to current wholesale renewable energy pricing alternatives). The magnitude of such impacts will be dependent upon program participation.

ATTACHMENTS

Attachment A: San Diego Community Power's SDCP FIT Schedule (FIT Tariff) Rev. 2021-12-16

Attachment B: SDCP's Feed-In Tariff Power Purchase Agreement





SDCP FIT SCHEDULE

Feed-In Tariff for Distributed Renewable Generation

A. APPLICABILITY

SDCP Feed-In Tariff ("FIT") Schedule is available to qualifying Applicants who wish to sell renewable energy to San Diego Community Power ("SDCP") from an eligible small-scale distributed renewable generating resource ("Eligible Resource"). SDCP reserves the right to revise SDCP FIT Schedule, the related FIT Application and the terms of the FIT Power Purchase Agreement ("PPA") from time to time. SDCP is not obligated to enter into a FIT PPA with any Applicant, and SDCP has no binding obligation under or in connection with this Schedule SDCP FIT until a related FIT PPA is duly executed by and between an Applicant and SDCP for an Eligible Resource.

Moreover, applicants are expected to review SDCP's Inclusive and Sustainable Workforce Policy to ensure compliance.

B. ELIGIBILITY CRITERIA

An Eligible Resource must meet the following criteria:

New Resource. The Eligible Resource must be new, meaning that the Eligible Resource must not have produced or delivered electric energy prior to the date on which its FIT Application is received by SDCP.

Small-Scale. The nameplate generating capacity of any Eligible Resource must be smaller than 1 MW (megawatt), alternating current.

Project Location. The Eligible Resource must be physically interconnected and located entirely within SDCP's territory.

RPS Eligibility. For purposes of this Schedule SDCP FIT, an Eligible Resource must qualify and be certified by the California Energy Commission ("CEC") as an Eligible Renewable Energy Resource ("ERR") as such term is defined in California Public Utilities Code Section 399.12 or Section 399.16, and as described in the most current edition of the CEC's Renewables Portfolio Standard ("RPS") Eligibility Guidebook ("Guidebook"), as may be amended or supplemented from time to time. The Eligible Resource must use a fuel source permitted under California's current RPS program, as further described in the Guidebook, including but not limited to the following, and it may include non-GHG-emitting energy storage in a hybrid facility arrangement:

Biomass	Biodiesel
Fuel cells using renewable fuels	Digester gas
Landfill gas	Municipal solid waste
Ocean wave	Ocean thermal
Tidal current	Solar Photovoltaic
Small hydroelectric	Solar thermal
Wind	Geothermal

Interconnection. An Eligible Resource must pursue and secure interconnection using the appropriate distribution-level interconnection process administered by San Diego Gas & Electric Company (“SDG&E”). Electrical interconnection of the Eligible Resource, including execution of all applicable agreements and payment of all applicable costs, shall be the sole responsibility of the FIT applicant and shall be completed consistent with interconnection requirements specified by SDG&E and/or the California Independent System Operator (“CAISO”), as appropriate. Any resources not meeting the requirements specified in the applicable interconnection procedures of the incumbent distribution utility will not be eligible for service under this SDCP FIT Schedule.

Permits. The FIT applicant must obtain all necessary permits from appropriate jurisdictional agencies and shall maintain such permits, as may be required, for the duration of the FIT PPA.

Bundled Product. The product sold by an Eligible Resource and purchased by SDCP shall include all electric energy, net of station service, environmental attributes (including related Renewable Energy Certificates, or “RECs”, which shall be transferred to SDCP using the Western Renewable Energy Generation Information System, or “WREGIS”) and capacity.

For the sake of clarity, environmental attributes shall include all emission reduction benefits associated with the generation of renewable electricity by the Eligible Resource as well as other attributes. Participating Applicants will need to register with WREGIS and transfer all RECs to SDCP’s designated WREGIS account.

Environment Attributes. An Eligible Resource accepting service under this Schedule SDCP FIT will deliver to SDCP both the electric energy generated and any environmental attributes (associated with such electric energy) produced by the Eligible Resource.

FIT Power Purchase Agreement. All Eligible Resources shall execute SDCP’s FIT Power PPA, which is a standard, non- negotiable, long-term contract created for the purpose of addressing SDCP power purchases from an Eligible Resource. SDCP’s FIT PPA can be accessed on SDCP’s website: www.sdcommunitypower.org.

C. TERM OF FIT PPA

Each FIT PPA shall have a delivery term of ten (10), fifteen (15) or twenty (20) years beginning from the Commercial Operation Date (the “Delivery Term”).

D. FIT PPA BASE PRICE

The base energy price for all FIT PPAs shall be based on the Time of Delivery as set forth in Table 1 below, subject to the application of Bonus Incentives as further described below.

Table 1		
Time Period	Hours	Price per MWh (kWh)
Premium Hours	19:00 – 00:00 (7:00 PM – Midnight)	\$120/MWh (\$0.12/kWh)
All Other Hours	All other hours	\$60/MWh (\$0.06/kWh)

E. BONUS INCENTIVES

SDCP may adjust FIT pricing for certain Eligible Resources meeting the criteria described below. Such adjustments shall be termed “Bonus Incentives” and, if applied, shall be paid during the first five (5) years of each FIT PPA. Applicants shall be notified of Bonus Incentive eligibility prior to FIT PPA execution.

Table 2	
Criteria:	Bonus Pricing Per MWh (kWh)
Local Business	\$2.50/MWh (\$0.0025/kWh)
Previously Developed Site	\$2.50/MWh (\$0.0025/kWh)
Sited within a Community of Concern	\$2.50/MWh (\$0.0025/kWh)

After the first five contract years, the price will revert to the base price set in Section D.

Details regarding the documentation required to establish Bonus Incentive eligibility are outlined in the FIT Application. Characteristics associated with each Bonus Incentive are defined as follows:

- Local Business: To qualify for the Local Business incentive the applicant and/or prime contractor must have a place of business (i.e. possesses a business license) physically headquartered within a member community of SDCP, as such membership exists on the date of FIT Application submittal.
- Previously Developed Sites: Such sites are defined as areas that either contain or have contained structures or were used for parking, loading or storage related to a previous or existing land use other than agricultural grazing or crop production within the last 20 years. To claim this bonus, the previously developed land must make up at least 20% of the project footprint. Development documentation, in the form of building permits or verifiable ground, aerial, or satellite photography, as solely determined by SDCP, must be provided by the FIT applicant.
- Sited within a Community of Concern: To qualify for the Sited within Communities of Concern incentive the Eligible Resource must be located entirely within a Disadvantaged Community, as defined by the California Office of Environmental Health Hazard Assessment (<https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>), or within a very low to low access census tract found in the City of San Diego’s Climate Equity Index (<https://www.sandiego.gov/sustainability/social-equity-and-job-creation>), either at the time of FIT application submittal. The geographical eligibility of Communities of Concern may expand as SDCP member cities enact their own Climate Equity Index designated census tracts.

F. FIT PAYMENTS

Payments will be made monthly by SDCP to the applicant for each Eligible Resource based on metered electric deliveries. Meter readings, net of station service, delivered by SDG&E will be used for payment determination as described in the FIT PPA.

G. FIT CAPACITY LIMIT

SDCP's FIT has a capacity limit of six (6) megawatts. The program will continue until there is no remaining capacity or until SDCP decides, at its sole discretion, to discontinue or suspend the program. SDCP's Governing Board reserves the right to adjust the noted FIT Capacity Limit at its sole discretion and without advance notice.

H. FORECASTING REQUIREMENTS

Generation forecasts will be required at the time of FIT application submittal and shall be updated (as needed) during construction and throughout the Delivery Term. Underperformance of an Eligible Resource, relative to forecast, may be grounds for financial penalties and/or FIT PPA termination.

I. PENALTIES

In any year of the Delivery Term, if the Eligible Resource over-generates in excess of 115% of contracted output, payments for such excess will be made at 50% of the base energy price applicable at the time of FIT PPA execution, subject to other pertinent limitations reflected in the FIT PPA.

System underperformance that results in less than 80% of contracted output being delivered over a consecutive two-year period shall be grounds for FIT PPA renegotiation.

J. FIT APPLICATION FEE

There is a non-refundable application fee of \$500 due at the time of FIT Application submittal.

K. RESERVATION SECURITY DEPOSIT

A Reservation Security Deposit of \$5 per kilowatt (kW) of Proposed Generator Capacity is due at the time of FIT Application submittal. The Security Deposit is retained in full amount by SDCP in the event the Project does not achieve Commercial Operation by the Commercial Operation Date. SDCP shall return the Reservation Deposit to Seller once the Project achieves Commercial Operation by crediting the full amount of the Reservation Deposit on the first payment.

L. DEVELOPMENT SECURITY DEPOSIT

A Development Security Deposit of \$5 per kilowatt (kW) of Proposed Generator Capacity is due at the time of FIT PPA execution. The Development Security Deposit is retained in full amount by SDCP in the event the Project does not achieve Commercial Operation by the Commercial Operation Date. SDCP shall return the Development Security Deposit to Seller once the Project achieves Commercial Operation by crediting the full amount of the Development Security Deposit on the first payment.

M. PERFORMANCE SECURITY DEPOSIT

A Performance Security Deposit of \$10 per kilowatt (kW) of Proposed Generator Capacity is due at the Commercial Operation Date. The Performance Security Deposit is retained in full amount by SDCP for the Term of the Power Purchase Agreement. SDCP shall return the Performance Security Deposit to Seller once the Term is completed by crediting the full amount of the Reservation Deposit on the last payment.

N. FIT APPLICATION

SDCP requires the sponsor of any Eligible Resource to complete and submit the currently effective FIT Application (“Application”), which can be viewed on the SDCP website. Any informational deficiencies or inaccuracies within a submitted Application may result in the rejection of such Application. Any determinations regarding the sufficiency, accuracy or completeness of a submitted Application will be made at SDCP’s sole discretion. Failure of a project sponsor to achieve any of the milestones reflected in a FIT Application will be grounds for rejection of such FIT Application and removal from SDCP’s FIT queue.

O. FIT APPLICATION TIMELINE

Interconnection supplemental review must be complete (i.e., a tendered Interconnection Agreement must be in place) and application for applicable permits must be submitted at the time of (or prior to) submittal of a FIT Application to SDCP.

P. FIT APPLICATION QUEUE

All FIT Applications will be accepted on a first come-first served basis. A FIT queue position shall only be established after SDCP, at its sole discretion, deems the related FIT Application to be complete and accepted. Until such notification is provided by SDCP to a FIT Applicant, no queue position shall be established.

Q. CURE PERIOD

SDCP will review a FIT Application following its receipt. Based on SDCP’s review, a FIT applicant may be provided with an opportunity to correct/address certain minor errors and/or deficiencies, as solely determined by SDCP, in a FIT Application. If such opportunity is provided, the applicant will be informed by SDCP of noted errors and/or deficiencies and will be afforded a ten-day cure period to correct such deficiencies (the “cure period”). The ten-day cure period shall commence following SDCP’s communication of such errors and/or deficiencies to the FIT applicant. The FIT applicant will retain its place in the queue during such cure period. If the applicant fails to correct noted errors and/or deficiencies within the ten-day cure period, the FIT applicants place in the FIT queue will be forfeited.

R. PARTICIPATION IN OTHER SDCP PROGRAMS

An Eligible Resource taking service under this Schedule SDCP FIT may not also obtain benefits from any of the following:

- 1) another power purchase agreement with SDCP for deliveries from the same Eligible Resource; or
- 2) any Net Energy Metering (“NEM”) option for energy deliveries from the same Eligible Resource.

S. SDCP APPROVAL

The SDCP CEO or their designee must execute every FIT PPA before it is in effect.

T. OTHER FIT PROGRAM DETAILS

A unique FIT Applicant may submit no more than one FIT Application per calendar month.

FEED-IN TARIFF
POWER PURCHASE AGREEMENT
BETWEEN
SAN DIEGO COMMUNITY POWER
AND
FIT PROJECT OWNER

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS	2
COVER SHEET	3
1. DOCUMENTS INCLUDED.....	6
2. SELLER'S FACILITY AND COMMERCIAL OPERATION DATE	6
3. CONTRACT CAPACITY AND QUANTITY; TERM; CONTRACT PRICE; BILLING; COLLATERAL REQUIREMENTS.....	9
4. GREEN ATTRIBUTES; RESOURCE ADEQUACY BENEFITS; ERR REQUIREMENTS	12
5. REPRESENTATION AND WARRANTIES; COVENANTS.....	13
6. GENERAL CONDITIONS	16
7. INDEMNITY	19
8. LIMITATION OF DAMAGES	20
9. NOTICES	20
10. INSURANCE	21
11. FORCE MAJEURE.....	23
12. EVENTS OF DEFAULT AND TERMINATION	24
13. GOVERNMENTAL CHARGES.....	27
14. CONFIDENTIALITY; RELEASE OF INFORMATION	27
15. ASSIGNMENT.....	28
16. GOVERNING LAW.....	28
17. DISPUTE RESOLUTION.....	29
18. MISCELLANEOUS	29
Appendix A - Definitions.....	32
Appendix B – Commercial Operation Date Certificate	42
Appendix C – Forecasting Requirements	43
Appendix D – Description of the Facility.....	44
Appendix E – Seller's Milestone Schedule.....	45
Appendix F – Notices List	46

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

COVER SHEET

Seller: Seller's Name, a Seller's form of business entity and state of organization

Buyer: San Diego Community Power, a California Joint Powers Authority

Facility Name: The Facility is named Name of Facility.

Description of Facility: A System Size as a number kW_{AC} Type of resource (e.g., photovoltaic, biomass, wind, etc. generation facility, as further described in Appendix D.

Facility Location: Facility address and/or cross streets.

Interconnection Point: The San Diego Gas & Electric Company ("SDG&E") electric system at description of physical interconnection point at a service voltage of voltage number kV.

Delivery Point: Interconnection Point

Milestones: As further described in Appendix E.

<u>Milestone</u>	<u>Expected Date for Completion</u>
Application	
Evidence of Site Control	
Draft Interconnection Agreement or evidence Project has passed Fast Track screening	
Evidence of Permit Application	
Executed Interconnection Agreement	
CEC Pre-Certification Obtained	
Final Use Permit	
Expected Construction Start Date	
Full Capacity Deliverability Status Obtained	
Initial Synchronization	
Expected Commercial Operation Date	
Guaranteed Commercial Operation Date	

Delivery Term:

- ☐ Ten (10) Contract Years
- ☐ Fifteen (15) Contract Years
- ☐ Twenty (20) Contract Years

Contract Capacity: Number of kWkW_{AC}

FEED-IN TARIFF
POWER PURCHASE AGREEMENT

Storage Capacity (if applicable): Number of kW kW_{AC}

Storage Output (if applicable): Number of kWh kWh_{AC}

Contract Quantity:

Contract Year	Contract Quantity (kWh_{AC})
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

Capacity Attributes (if applicable): Capacity Attributes

Contract Price:

The Contract Price shall be determined hourly within each day of the Delivery Term as follows:

Time of Day (Hours PPT)	Contract Price (\$/MWh)
Hour Ending (HE) 01 - 18	\$60/MWh
Hour Ending (HE) 19 - 24	\$120/MWh

FEED-IN TARIFF
POWER PURCHASE AGREEMENT

Bonus Incentive:

The Bonus Incentive paid for the first five (5) Contract Years shall be:

- ☐ Local Business: \$2.50/MWh
- ☐ Previously Developed Site: \$2.50/MWh
- ☐ Sited within a Community of Concern: \$2.50/MWh

Non-Refundable Application Fee: \$500

Reservation Deposit: \$5 per kW of Contract Capacity

Development Security Deposit: \$10 per kW of Contract Capacity

Performance Security Deposit: \$20 per kW of Contract Capacity

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

This Feed-In Tariff Power Purchase Agreement (“Agreement”) is entered into as of the Effective Date between San Diego Community Power, a California joint powers authority (“Buyer” or “SDCP”), and Seller’s Name. (“Seller”), a Seller’s form of business entity and state of organization. Seller and Buyer are sometimes referred to in this Agreement jointly as “Parties” or individually as “Party.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Appendix A to this Agreement.

In consideration of the mutual promises and obligations stated in this Agreement and its appendices, the Parties agree as follows:

1. DOCUMENTS INCLUDED

This Agreement includes the following appendices, which are specifically incorporated herein and made a part of this Agreement:

Appendix A Definitions

Appendix B Commercial Operation Date Confirmation Letter

Appendix C Forecasting Requirements

Appendix D Description of the Facility

Appendix E Seller’s Milestone Schedule

Appendix F Notices List

2. SELLER’S FACILITY AND COMMERCIAL OPERATION DATE

2.1. Facility. This Agreement governs Buyer’s purchase of the Product from the electrical generating facility (hereinafter referred to as the “Facility” or “Project”) as described in this Section 2.1.

2.1.1. Facility Location. The Facility is physically located at the address or location identified on the Cover Sheet.

2.1.2. Facility Name. The Facility name is identified on the Cover Sheet.

2.1.3. Type of Facility. The Facility’s renewable resource is identified on the Cover Sheet.

2.1.4. Interconnection Point. The Interconnection Point shall be the point of electrical interconnection as described on the Cover Sheet.

2.1.5. Delivery Point. The Delivery Point is the Interconnection Point.

2.1.6. Facility Description. A description of the Facility, including a summary of its significant components, a drawing showing the general arrangements of the Facility, and a single line diagram illustrating the interconnection of the

FEED-IN TARIFF
POWER PURCHASE AGREEMENT

Facility and loads with the Transmission/Distribution Owner's electric distribution system, is attached and incorporated herein as Appendix D.

2.2. Guaranteed Commercial Operation Date.

- 2.2.1. The Expected Commercial Operation Date is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation and which date shall be no later than twenty-four (24) months from the Effective Date.
- 2.2.2. The Guaranteed Commercial Operation Date means the Expected Commercial Operation Date. Seller shall achieve Commercial Operation no later than the Guaranteed Commercial Operation Date (as such date may be extended pursuant to Section 2.2.3 below up to one hundred twenty (180) days).
- 2.2.3. The Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "Development Cure Period") for the duration of any and all delays arising out of the following circumstances:
 - 2.2.3.1. a Force Majeure event occurs; or
 - 2.2.3.2. the Interconnection Facilities are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of commercially reasonable efforts by Seller; or
 - 2.2.3.3. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under Section 2.2.3.1 and 2.2.3.2 above under the Development Cure Period shall not exceed one hundred twenty (180) days, for any reason, including a Force Majeure event, and no extension shall be given if the delay was the result of Seller's failure to take all reasonable actions to meet its requirements and deadlines. Notwithstanding anything to the contrary, no extension under the Development Cure Period shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide Notice to Buyer as required in the next sentence. Seller shall provide prompt Notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide Notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation

FEED-IN TARIFF
POWER PURCHASE AGREEMENT

demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take reasonable actions.

- 2.2.4. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of sixty (60) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2.2.4.
- 2.2.5. If the Facility has not achieved Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement.
- 2.3. Commercial Operation.
- 2.3.1. Seller shall provide Notice to Buyer of the Commercial Operation Date of the Facility no later than thirty (30) days before such date.
- 2.3.2. Commercial Operation shall occur only when all of the following conditions have been satisfied:
- 2.3.2.1. the Facility's status as an ERR is demonstrated by Seller's receipt of pre-certification from the CEC;
 - 2.3.2.2. the Parties have executed and exchanged the "Commercial Operation Date Confirmation Letter" attached as Appendix B;
 - 2.3.2.3. Seller has obtained and is in compliance with the Interconnection Agreement for the Facility, and Seller has satisfied all applicable metering requirements in Sections 6.1 and 6.2;
 - 2.3.2.4. Seller has furnished to Buyer all insurance documents required under Section 10;
 - 2.3.2.5. Seller has provided Notice thirty (30) days prior to the Commercial Operation Date as required under Section 2.3.1;

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

- 2.3.2.6. Seller has obtained all permits necessary to operate the Facility and is in compliance with all Laws applicable to the operation of the Facility;
- 2.3.2.7. Seller has successfully installed and tested the Facility at its full Contract Capacity, and the Facility is capable of reliably generating at its full Contract Capacity; and
- 2.3.2.8. Seller has satisfied the Collateral Requirement set forth in Section 3.9.2.

3. CONTRACT CAPACITY AND QUANTITY; TERM; CONTRACT PRICE; BILLING; COLLATERAL REQUIREMENTS

- 3.1. Contract Capacity. The “Contract Capacity” is the quantity, expressed in kW alternating current (AC), set forth on the Cover Sheet. The Contract Capacity shall not exceed 1,000 kW AC. Seller shall not modify the Facility to increase the Contract Capacity without the prior written consent of Buyer. Any increase in Contract Capacity must be consistent with the interconnection requirements of the Transmission/Distribution Owner.
- 3.2. Contract Quantity. The “Contract Quantity” during each Contract Year is the quantity set forth in the applicable Contract Year in the Cover Sheet, which amount is net of Station Use.
- 3.3. Transaction. During the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, all Product produced by or associated with the Facility that is delivered to the Delivery Point. Whenever Facility output is not enough to supply Station Use and transformation and transmission losses to the Delivery Point, Seller shall purchase energy required to serve the Facility’s on-site load from Buyer pursuant to Buyer’s applicable retail rate schedule. In no event shall Seller have the right to procure the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement. Buyer shall have no obligation to receive or purchase the Product from Seller prior to the Commercial Operation Date or after the end of the Delivery Term.
- 3.4. Term of Agreement; Survival of Rights and Obligations.
 - 3.4.1. The term shall commence upon the Effective Date and shall remain in effect until the conclusion of the Delivery Term, unless earlier terminated pursuant to Sections 11.4 or 12 of this Agreement (the “Term”).
 - 3.4.2. Notwithstanding anything to the contrary in this Agreement, applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Section 14.1 shall remain in full force and effect for two (2) years following the termination of this

FEED-IN TARIFF
POWER PURCHASE AGREEMENT

Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

3.5. Delivery Term. The Delivery Term shall commence on the Commercial Operation Date and continue for a period of ten (10), fifteen (15), or twenty (20) Contract Years, as specified on the Cover Sheet, unless the Agreement is earlier terminated pursuant to the terms of this Agreement.

3.6. Contract Price.

3.6.1. Throughout the Delivery Term, and subject to and in accordance with the terms of this Agreement, Buyer shall pay the Contract Price to Seller for the Product per MWh of Delivered Energy in accordance with the Cover Sheet.

3.6.2. During the first five (5) Contract Years of the Delivery Term, an additional Bonus Incentive may be paid by Buyer to Seller per MWh of Delivered Energy if elected on the Cover Sheet. If elected on the Cover Sheet, Seller agrees to meet the applicable criteria in the definition of “Bonus Incentive” set forth in Appendix A to qualify for the Bonus Incentive and shall promptly provide Buyer all necessary evidence and/or documents to confirm compliance with the criteria.

3.6.3. In any Contract Year, if the amount of Delivered Energy exceeds one hundred fifteen percent (115%) of the annual Contract Quantity amount, the Contract Price for such Delivered Energy in excess of one hundred fifteen percent (115%) shall be adjusted to be fifty percent (50%) of the applicable Contract Price.

3.6.4. Seller shall curtail production of the Facility upon: (i) Notice from the CAISO or the Transmission/Distribution Owner or any other jurisdictional entity to curtail Energy deliveries; or (ii) Notice that Seller has been given a curtailment order or similar instruction in order to respond to an Emergency. Buyer shall have no obligation to pay Seller for any Product delivered in violation of this Section 3.6.4 or for any Product that Seller would have been able to deliver but for the fact of a curtailment pursuant to this Section 3.6.4. Seller shall assume all liability and reimburse Buyer for any and all costs and charges incurred by Buyer as a result of Seller delivering Energy in violation of this Section 3.6.4.

3.7. Billing.

3.7.1. The amount of Delivered Energy shall be determined by the meter specified in Section 6.2.1 or Check Meter, as applicable. Buyer shall not have any obligation to purchase from Seller any Energy that is not or cannot be delivered to the Delivery Point, regardless of circumstance.

3.7.2. For the purpose of calculating monthly payments under this Agreement, the amount recorded by the meter specified in Section 6.2.1 or Check Meter, as applicable, will be multiplied by the Contract Price set forth in the Cover Sheet,

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

as may be adjusted under Section 3.6.2, less any Energy produced by the Facility for which Buyer is not obligated to pay Seller pursuant to Section 3.7.1.

- 3.7.3. On or before the last Business Day of the month immediately following each calendar month, Seller shall determine the amount of Delivered Energy received by Buyer pursuant to this Agreement for each monthly period and issue an invoice showing the calculation of the payment. Seller shall also provide to Buyer: (i) records of metered data sufficient to document and verify the generation of Delivered Energy by the Facility during the preceding month; (ii) access to any records; and (iii) an invoice, in the format specified by Buyer. Buyer shall pay Seller by check or Automated Clearing House transfer no later than thirty (30) days of receipt of invoice from Seller if the value of the purchased energy in a month is at least fifty dollars (\$50.00); if less, Buyer may pay Seller quarterly. Buyer shall have the right, but not the obligation, to read the Facility's meter on a daily basis.
- 3.7.4. 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. In the event adjustments to payments are required as a result of inaccurate meter(s), Buyer in its reasonable discretion shall determine the correct amount of Delivered Energy received under this Agreement during any period of inaccuracy and recompute the amount due from Buyer to Seller for the Delivered Energy delivered during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within thirty (30) days of such resolution.
- 3.8. Title and Risk of Loss. Title to and risk of loss related to the Energy from the Facility shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product from the Facility free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person.
- 3.9. Collateral Requirements. To secure its obligations under this Agreement, Seller shall deliver to Buyer Development Security and Performance Security (together, "Collateral Requirements") as follows:
- 3.9.1. Seller shall deliver Development Security to Buyer within thirty (30) 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 thereon 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 other than to satisfy a Damage Payment or a Termination Payment. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

Development Security to Seller, 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 (a) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (b) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (c) 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 in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security.

- 3.9.2. On or before the Commercial Operation Date, Seller shall deliver Performance Security to Buyer in the form of cash or Letter of Credit. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (i) the Delivery Term has expired or terminated early; and (ii) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, 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 (a) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (b) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (c) 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. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable.

4. GREEN ATTRIBUTES; RESOURCE ADEQUACY BENEFITS; ERR REQUIREMENTS

- 4.1. Green Attributes. Seller hereby provides and conveys all rights, title, and interest in all Green Attributes (whether now existing or that hereafter come into existence during the Term) from the Facility to Buyer as part of the Product being delivered to Buyer for the duration of the Delivery Term. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer to the fullest extent allowed by Law as included in the delivery of the Product from the Facility. Seller represents that the Product and Green Attributes from the Facility have not been, nor

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

will be, sold or used to satisfy any California Renewables Portfolio Standard obligation other than the RPS Requirements applicable to Buyer.

- 4.2. Conveyance of Product. Throughout the Delivery Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product. Seller shall, at its own cost, take all actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Green Attributes, Resource Adequacy Benefits, if any, and Capacity Attributes, if any, for Buyer's benefit throughout the Delivery Term.
- 4.3. WREGIS. Prior to the Commercial Operation Date, Seller shall cause and allow Buyer, or Buyer's agent, to be the "Qualified Reporting Entity" and "Account Holder" (as such terms are defined by WREGIS) for the Facility. In the event that Buyer is not the Qualified Reporting Entity, Seller shall, at its sole expense, take all actions necessary and provide any documentation requested by Buyer in support of WREGIS account administration and compliance with the California Renewables Portfolio Standard. In addition, Seller shall, at its sole expense, take all necessary steps and submit or file all necessary documentation to ensure that the Facility remains an ERR throughout the Delivery Term as set forth in Section 4.5 and that all WREGIS Certificates associated with the Product accrue to Buyer and will satisfy the requirements of the California Renewables Portfolio Standard.
- 4.4. Resource Adequacy Benefits. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Contract Capacity, including Capacity Attributes, if any, from the Project to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe ("Resource Adequacy Requirements"). If providing any Resource Adequacy, Seller shall (i) comply with the Resource Adequacy Requirements set forth in the CAISO Tariff, including Section 40 thereof, as may be amended from time to time; and (ii) cooperate in good faith with and comply with reasonable requests of Buyer and the CAISO to enable Buyer and/or the CAISO to assign Capacity Attributes and Resource Adequacy Benefits to the Facility.
- 4.5. Eligible Renewable Energy Resource. Seller shall take all actions necessary to achieve and maintain status as an ERR throughout the Delivery Term. Within thirty (30) days after the Commercial Operation Date, Seller shall file an application or other appropriate request with the CEC for CEC Certification for the Facility. Seller shall expeditiously seek CEC Certification, including promptly responding to any requests for information from the requesting authority.

5. REPRESENTATION AND WARRANTIES; COVENANTS

- 5.1. Representations and Warranties. On the Effective Date, each Party represents and warrants to the other Party that:
- 5.1.1. it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

- 5.1.2. 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 documents, any contracts to which it is a party or any Laws;
 - 5.1.3. this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms;
 - 5.1.4. 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; and
 - 5.1.5. 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.
- 5.2. General Covenants. Each Party covenants that throughout the Term of this Agreement:
- 5.2.1. it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;
 - 5.2.2. it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and
 - 5.2.3. it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any Law.
- 5.3. Seller's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants specified in Sections 5.1 and 5.2, Seller makes the following additional representations, warranties and covenants to Buyer, as of the Effective Date:
- 5.3.1. Seller has not participated in the Self-Generation Incentive Program (as defined in CPUC Decision 01-03-073), the California Solar Initiative (as defined in CPUC Decision 06-01-024), and/or other similar California ratepayer subsidized program relating to energy production or rebated capacity costs with respect to the Facility.
 - 5.3.2. Seller's execution of this Agreement will not violate Public Utilities Code Section 2821(d)(1), if applicable;
 - 5.3.3. Seller has met all applicable legal and regulatory requirements to sell wholesale electricity in California;

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

- 5.3.4. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an ERR as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law;
- 5.3.5. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement, the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law;
- 5.3.6. Throughout the Delivery Term, Seller shall: (i) own and operate the Facility; (ii) deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any individual or entity; and (iii) hold the rights to all of the Product;
- 5.3.7. Seller is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of Buyer in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement;
- 5.3.8. Throughout the Delivery Term: (i) Seller shall not convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer; and (ii) Seller shall not start-up or operate the Facility per instruction of or for the benefit of any third party, except as required by other Laws;
- 5.3.9. Seller has not relied on any promises, representations, statements or information of any kind that are not contained in this Agreement in deciding to enter into this Agreement;
- 5.3.10. The construction of the Facility shall comply with all Laws, including applicable state and local laws, building standards, and interconnection requirements;

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

5.3.11. No other person or entity, including any other generating facility, has any rights in connection with Seller's Interconnection Agreement or Seller's Interconnection Facilities and no other persons or entities shall have any such rights during the Term; and

5.3.12. During the Delivery Term, Seller shall not allow any other person or entity, including any other generating facility, to use Seller's Interconnection Facilities.

6. GENERAL CONDITIONS

6.1. Interconnection Agreements. If either Buyer or the Transmission/Distribution Owner does not deem Seller's existing interconnection service, equipment and agreement satisfactory for the delivery of Product under this Agreement, Seller shall execute an Interconnection Agreement for the Facility with the Transmission/Distribution Owner and pay and be responsible for designing, installing, operating, and maintaining the Facility in accordance with all applicable laws and regulations and shall comply with all applicable Buyer, Transmission/Distribution Owner, CAISO, CPUC and FERC tariff provisions, including applicable interconnection and metering requirements. Seller shall also comply with any modifications, amendments or additions to the applicable tariff and protocols. Prior to and during the Delivery Term, Seller shall arrange and pay independently for any and all necessary costs under any Interconnection Agreement with the Transmission/Distribution Owner. To make deliveries to Buyer, Seller must maintain the Interconnection Agreement with the Transmission/Distribution Owner in full force and effect.

6.2. Metering Requirements.

6.2.1. All Energy from the Project must be delivered through a single revenue quality meter and that meter must be dedicated exclusively to the Project. Such meter must be installed on the high side of the Facility's step up transformer, unless otherwise approved by Buyer. All Delivered Energy purchased under this Agreement must be measured by the Project's revenue quality meter(s) to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project.

6.2.2. Buyer may, at its sole cost, furnish and install one Check Meter at the interconnection associated with the Facility at a location provided by Seller that is compliant with Buyer's electric service requirements. The Check Meter may be interconnected with Buyer's communication network, or the communication network of Buyer's agent, to permit periodic, remote collection of revenue quality meter data. In the event that Buyer elects to install a Check Meter, Buyer may compare the Check Meter data to the Facility's revenue meter data. If the deviation between the Facility's revenue meter data and the Check Meter data for any comparison is greater than 0.3%, Buyer may provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or the Facility's revenue meter, as applicable. Each Party shall bear its own costs for any meter check or

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

recertification. Testing procedures and standards for the Check Meter shall be the same as for a comparable Buyer-owned meter. The Parties shall have the right to have representatives present during all such tests. The Check Meter, if Buyer elects to install a Check Meter, is intended to be used for back-up purposes in the event of a failure or other malfunction of the Facility's revenue meter, and Check Meter data shall only be used to validate the Facility's revenue meter data and, in the event of a failure or other malfunction of the Facility's revenue meter, in place of the Facility's revenue meter until such time that the Facility's revenue meter is recertified.

6.3. Meter Data. Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, including any inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter readings from Seller or Seller's meter reading agent, which may be SDG&E.

6.4. Standard of Care. Seller shall: (i) maintain and operate the Facility and Interconnection Facilities in conformance with all Laws and Prudent Electrical Practices; (ii) obtain any governmental authorizations and permits required for the construction and operation of the Facility and Interconnection Facilities; and (iii) generate, schedule and perform transmission services in compliance with all applicable operating policies, criteria, rules, guidelines and tariffs and Prudent Electrical Practices. Seller shall reimburse Buyer for any and all losses, damages, claims, penalties, or liability Buyer incurs as a result of Seller's failure to obtain or maintain any governmental authorizations and permits required for construction and operation of the Facility throughout the Term of this Agreement.

6.5. Access Rights.

6.5.1. Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, fuel consumption (if applicable), efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall provide this information electronically to Buyer within twenty (20) days of Buyer's request.

6.5.2. Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right to inspect the Facility on reasonable advance notice during normal business hours and for any purposes reasonably connected with this Agreement. Buyer, its authorized agents, employees and inspectors must (i) at all times adhere to all safety and security procedures as may be required by Seller; and (ii) not interfere with the operation of the Project. Buyer shall make reasonable efforts to coordinate its emergency activities with the safety and security departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's safety and security departments, if any exist.

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

- 6.6. Protection of Property. Seller shall be solely responsible for protecting the Facility from possible damage resulting from electrical disturbances or faults caused by the operation, faulty operation, or non-operation of the Transmission/Distribution Owner's facilities. Buyer shall not be liable for any such damages so caused.
- 6.7. Forecasting. Seller shall comply with the forecasting in Appendix C.
- 6.8. Greenhouse Gas Emissions. Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Facility reasonably necessary to permit Buyer to comply with such requirements, if any.
- 6.9. Reporting and Record Retention.
- 6.9.1. Seller shall use commercially reasonable efforts to meet the Milestone Schedule set forth in Appendix E and avoid or minimize any delays in meeting such schedule. Seller shall provide Project development status reports in a format and a frequency, which shall not exceed one (1) report per month, specified by Buyer. The report shall describe Seller's progress relative to the development, construction, and startup of the Facility, as well as provide Notice of any anticipated change to the Commercial Operation Date and whether Seller is on schedule to meet the Commercial Operation Date.
- 6.9.2. Seller shall within ten (10) Business Days of receipt thereof provide to Buyer copies of any Interconnection Agreement and all other material reports, studies and analyses furnished by any Transmission/Distribution Owner, and any correspondence with the Transmission/Distribution Owner related thereto, concerning the interconnection of the Facility to the Transmission/Distribution Owner's electric system or the transmission of Energy on the Transmission/Distribution Owners' electric system.
- 6.9.3. Seller shall provide to Buyer on the Commercial Operation Date, and within thirty (30) days after the completion of each Contract Year thereafter during the Delivery Term, a copy of any inspection and maintenance report regarding the Facility that was also provided to the Transmission/Distribution Owner during the previous Contract Year.
- 6.10. Tax Withholding Documentation. Upon Buyer's request, Seller shall promptly provide to Buyer Internal Revenue Service tax Form W-9 and California tax Form 590 (or their equivalent), completed with Seller's information, and any other documentation necessary for Buyer to comply with its tax reporting or withholding obligations with respect to Seller.

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

- 6.11. Modifications to Facility. During the Delivery Term, Seller shall not repower or materially modify or alter the Facility without the written consent of Buyer. Material modifications or alterations include, but are not limited to, (i) movement of the Site, (ii) changes that may increase or decrease the expected output of the Facility, (iii) changes that may affect the generation profile of the Facility, (iv) changes that may affect the ability to accurately measure the output of Product from the Facility and (v) changes that conflict with elections, information or requirements specified elsewhere in this Agreement. Material modifications or alterations do not include maintenance and repairs performed in accordance with Prudent Electrical Practices. Seller shall provide to Buyer Notice not less than ninety (90) days before any proposed repowering, modification or alteration occurs describing the repowering, modification or alteration to Buyer's reasonable satisfaction.
- 6.12. No Additional Incentives. Seller agrees that, during the Term of this Agreement, it shall not seek additional compensation or other benefits pursuant to the Self-Generation Incentive Program, as defined in CPUC Decision 01-03-073, the California Solar Initiative, as defined in CPUC Decision 06-01-024, Buyer's net energy metering tariff, or other similar California ratepayer subsidized program relating to energy production with respect to the Facility.
- 6.13. Small Hydro/Private Energy Producer. Seller agrees to provide to Buyer copies of each of the documents identified in California Public Utilities Code Section 2821(d)(1), if applicable, as may be amended from time to time, as evidence of Seller's compliance with such Public Utilities Code section prior to the Commercial Operation Date and, after the Commercial Operation Date, within thirty (30) days of Seller's receipt of written request.
- 6.14. Site Control. Seller shall have Site Control as of the earlier of: (i) the Commercial Operation Date; or (ii) any date before the Commercial Operation Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, Seller shall maintain Site Control throughout the Delivery Term. Seller shall promptly provide Buyer with Notice if there is any change in the status of Seller's Site Control.

7. INDEMNITY

- 7.1. Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, and employees of such other Party against and from any and all loss and liability (including reasonable attorneys' fees) for injuries to persons, including employees of either Party, and physical damage to property, including property of either Party, resulting from or arising out of: (i) the engineering, design, construction, maintenance, or operation of the indemnitor's facilities; (ii) the installation of replacements, additions, or betterments to the indemnitor's facilities; or (iii) the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement. This indemnity and save harmless provision shall apply notwithstanding the active or passive negligence of the indemnitee. Neither Party shall be indemnified for liability or loss resulting from its sole negligence or willful misconduct. The indemnitor shall, on the other Party's request, defend any

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

suit asserting a claim covered by this indemnity and shall pay all costs, including reasonable attorneys' fees that may be incurred by the other Party in enforcing this indemnity.

7.2. Each Party shall defend, save harmless and indemnify the other Party, its directors, officers, employees, and agents, assigns, and successors in interest, for and against any penalty imposed upon the other Party to the extent caused by the Party's failure to fulfill its obligations under this Agreement.

7.3. Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss and liability (including reasonable attorneys' fees) in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in this Agreement.

8. LIMITATION OF DAMAGES

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, AND 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. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 7 (INDEMNITY), 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.

9. NOTICES

Notices (other than forecasts and scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a Notice by overnight mail or

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

courier shall be deemed to have been received on the next Business Day after such Notice is sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior oral communication, in which case any such Notice shall be deemed received on the day sent. A Party may change its addresses by providing notice of same in accordance with this provision. All Notices, requests, invoices, statements or payments for this Facility must reference this Agreement's identification number. Notices shall be provided as indicated in Appendix F.

10. INSURANCE

10.1. Insurance Coverage. Seller shall, at its own expense, starting on the Effective Date and until the end of the Term, and for such additional periods as may be specified below, provide and maintain in effect the following insurance policies and minimum limits of coverage as specified below, and such additional coverage as may be required by Law, with insurance companies authorized to do business in the State of California, with an A.M. Best's Insurance Rating of not less than A-:VII.

10.1.1. Commercial general liability insurance, written on an occurrence, not claims-made basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, contractual liability, premises-operations, owners and contractors protective, hazard, explosion, collapse and underground. Such insurance must bear a combined single limit per occurrence and annual aggregate of not less than one million dollars (\$1,000,000.00), exclusive of defense costs, for all coverages. Such insurance must contain standard cross-liability and severability of interest provisions. If Seller elects, with Buyer's written concurrence, to use a "claims made" form of commercial general liability insurance, then the following additional requirements apply: (i) the retroactive date of the policy must be prior to the Effective Date; and (ii) either the coverage must be maintained for a period of not less than four (4) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than four (4) years after this Agreement terminates.

10.1.2. Workers' compensation insurance with statutory limits, as required by the state having jurisdiction over Seller's employees, and employer's liability insurance with limits of not less than: (i) bodily injury by accident - one million dollars (\$1,000,000.00) each accident; (ii) bodily injury by disease - one million dollars (\$1,000,000.00) policy limit; and (iii) bodily injury by disease - one million dollars (\$1,000,000.00) each employee.

10.1.3. Commercial automobile liability insurance covering bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000.00) per occurrence. Such insurance must cover liability arising out of Seller's use of all owned, non-owned and hired automobiles in the performance of the Agreement.

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

10.1.4. Umbrella/excess liability insurance, written on an occurrence, not claims-made basis, providing coverage excess of the underlying commercial general liability and commercial automobile liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than one million dollars (\$1,000,000.00) per occurrence and in the annual aggregate.

10.2. Additional Insurance Provisions.

10.2.1. On or before the later of (i) sixty (60) days after the Effective Date and (ii) the date immediately preceding commencement of construction of the Facility, and again within a reasonable time after coverage is renewed or replaced, Seller shall furnish to Buyer certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to Buyer. Notwithstanding the foregoing sentence, Seller shall in no event furnish Buyer certificates of insurance evidencing required coverage later than the Commercial Operation Date. All deductibles, co-insurance and self-insured retentions applicable to the insurance above must be paid by Seller. Such certificates shall specify that Buyer shall be given at least thirty (30) days' prior Notice in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Buyer's receipt of certificates that do not comply with the requirements stated herein, or Seller's failure to provide such certificates, do not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 10 and do not constitute a waiver of any of the requirements of Section 10.

10.2.2. All insurance certificates, endorsements, cancellations, terminations, alterations, and material changes of such insurance must be issued, clearly labeled with this Agreement's identification number and submitted in accordance with Section 9 and Appendix F. Buyer shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

10.2.3. The insurance requirements set forth herein shall apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by Law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The commercial general liability insurance and umbrella/excess liability insurance required herein must name Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller's construction, use or ownership of the Facility.

10.2.4. Seller shall remain liable for all acts, omissions or default of any subcontractor or subsupplier and shall indemnify, defend and hold harmless Buyer for any

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

and all loss or damages, as well as all costs, charges and expenses which Buyer may suffer, incur, or bear as a result of any acts, omissions or default by or on behalf of any subcontractor or subsupplier.

10.2.5. If Seller fails to comply with any of the provisions of this Section 10, Seller, among other things and without restricting Buyer's remedies under Law or otherwise, shall, at its own cost, act as an insurer and provide insurance in accordance with the terms and conditions of this Section 10. With respect to the required commercial general liability insurance, umbrella/excess liability insurance, and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.

11. FORCE MAJEURE

11.1. No Default for Force Majeure. Notwithstanding the limitation set forth in Section 2.2.3.1 with respect to an extension of the Guaranteed Commercial Operation Date due to Force Majeure, once Seller has achieved Commercial Operation, neither Party shall be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

11.2. Requirements Applicable to Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure, (i) the Claiming Party must, as soon as practicable, give the other Party Notice of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance; and (ii) the Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

11.3. Limitations. The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

11.4. Termination. If an event of Force Majeure has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

upon Notice to the other Party, save and except for those obligations specified in Section 3.4.2, and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

12. EVENTS OF DEFAULT AND TERMINATION

12.1. Termination. Unless terminated earlier pursuant to Section 11.4 or this Section 12, this Agreement shall automatically terminate immediately following the last day of the Delivery Term.

12.2. Events of Default. An “Event of Default” means, with respect to a Party, the occurrence of any of the following:

12.2.1. With respect to either Party:

12.2.1.1. A Party fails to make any payment due and owing under this Agreement, if such failure is not cured within five (5) Business Days after Notice from the non-breaching Party;

12.2.1.2. Except for an obligation to make payment when due, if there is a failure of a Party to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure provides a separate termination right for the non-breaching Party or to the extent excused by Force Majeure), if such failure is not remedied within thirty (30) days after Notice thereof;

12.2.1.3. Any representation or warranty made by a Party (a) is false or misleading in any material respect when made or (b) becomes false or misleading in any material respect during the Term, and such default is not remedied within thirty (30) days after Notice thereof; or

12.2.1.4. A Party becomes Bankrupt.

12.2.2. With respect to Seller:

12.2.2.1. Seller fails to take all corrective actions specified in any Buyer Notice, within the time frame set forth in such Notice, that the Facility is out of compliance with any term of this Agreement; provided that if such corrective action falls under a specific termination right under Section 12.2.2, then the time frame, if any, set forth for such right shall apply;

12.2.2.2. The Facility has not achieved Commercial Operation by the Expected Commercial Operation Date specified in Section 2.2.1 and Seller has not elected to pay Commercial Operation Delay Damages pursuant to Section 2.2.4;

12.2.2.3. Subject to Section 11, Seller delivers less than eighty percent (80%) of the applicable Contract Quantity from the Facility to Buyer for a period of two (2) consecutive Contract Years, and Seller fails to (i)

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the eighty percent (80%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition within a reasonable period of time, not to exceed one hundred eighty (180) days (the “Cure Plan”) and (ii) completes such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

12.2.2.4. Seller fails to maintain its status as an ERR as set forth in Section 4.5 of the Agreement and does not restore such status following thirty (30) days’ Notice from Buyer;

12.2.2.5. Seller abandons the Facility;

12.2.2.6. Seller installs generating equipment at the Facility that exceeds the Contract Capacity and such excess generating capacity is not removed within five (5) Business Days after Notice from Buyer;

12.2.2.7. Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement product that was not generated by the Facility;

12.2.2.8. Seller fails to install any of the equipment or devices necessary for the Facility to satisfy the Contract Capacity set forth in Section 3.1;

12.2.2.9. An unauthorized assignment of the Agreement, as set forth in Section 15;

12.2.2.10. Seller fails to reimburse Buyer any amounts due under this Agreement and such failure is not cured within five (5) Business Days after Notice from Buyer;

12.2.2.11. Seller has not sold or delivered Energy from the Facility to Buyer for a period of twelve (12) consecutive months;

12.2.2.12. Seller breaches the requirements in Section 6.12 regarding incentives; or

12.2.2.13. Seller fails to maintain the Collateral Requirement set forth in Section 3.9 and such failure is not cured within five (5) Business Days after Notice from Buyer.

12.3. Declaration of an Event of Default. If an Event of Default has occurred, the non-defaulting Party shall have the right to: (i) send Notice, designating a day, no earlier than five (5) days after such Notice and no later than twenty (20) days after such Notice, as an early termination date of this Agreement (“Early Termination Date”); (ii) accelerate all amounts owing between the Parties; (iii) terminate this Agreement and end the Delivery Term effective as of the Early Termination Date; and (iv) collect

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

any Termination Payment under Section 12.5. If the defaulting party is Seller and Buyer terminates this Agreement prior to the start of the Commercial Operation Date, Buyer shall have the right to retain the entire Development Security as the Damage Payment.

12.4. Release of Liability for Termination. If an Event of Default shall have occurred, the non-defaulting Party shall have the right to immediately suspend performance under this Agreement and pursue all remedies available at Law or in equity against the defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

12.5. Calculation of Termination Payment. If either Party exercises a termination right under Section 12 after the Commercial Operation Date, the payment owed by the defaulting Party to the non-defaulting Party (the “Termination Payment”) shall be the aggregate of all Settlement Amounts, plus any and all other amounts due to or from the the non-defaulting Party (as of the Early Termination Date) netted into a single amount. The non-defaulting Party shall calculate, in a commercially reasonable manner, the Termination Payment as of the Early Termination Date. Prior to the Commercial Operation Date, if Buyer is the defaulting Party, the Settlement Amount shall be Zero dollars (\$0). Buyer shall not have to enter into replacement transactions to establish a Settlement Amount. Buyer shall have the right to draw upon the Collateral Requirement to collect any Settlement Amount owed to Buyer.

12.6. Rights and Remedies Are Cumulative. The rights and remedies of the Parties pursuant to this Section 12 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

12.7. Duty to Mitigate. Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party’s non-performance of this Agreement, including with respect to termination of this Agreement.

12.8. Right of First Refusal.

12.8.1. If Seller terminates this Agreement pursuant to Section 11.4, or if Seller has an Event of Default prior to the Commercial Operation Date, neither Seller nor Seller’s Affiliates may sell, or enter into a contract to sell, Energy, Green Attributes, Capacity Attributes, or Resource Adequacy Benefits, generated by, associated with or attributable to a generating facility installed at the Site to a party other than Buyer for a period of two (2) years following the effective date of such termination (“Restricted Period”).

12.8.2. This prohibition on contracting and sale shall not apply if, before entering into such contract or making a sale to a party other than Buyer, Seller or Seller’s Affiliate provides Buyer with a written offer to sell the Energy, Green Attributes, Capacity Attributes and Resource Adequacy Benefits to Buyer at the Contract Price and on other terms and conditions materially similar to the terms

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

and conditions contained in this Agreement and Buyer fails to accept such offer within forty-five (45) days after Buyer's receipt thereof.

12.8.3. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site of the proposed Facility during the Restricted Period so long as the limitations contained in this Section 12.8 apply, unless the transferee agrees to be bound by the terms set forth in this Section 12.8 pursuant to a written agreement reasonably approved by Buyer.

12.8.4. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach of the covenants contained within this Section 12.8.

13. GOVERNMENTAL CHARGES

13.1. Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Product or the Transaction arising at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall reimburse Seller for such Governmental Charges within thirty (30) days of Notice by Seller. If Buyer is required by Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall reimburse Buyer for such amounts within thirty (30) days of Notice from Buyer. 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. A Party that is exempt at any time and for any reason from one or more Governmental Charges bears the risk that such exemption shall be lost or the benefit of such exemption reduced; and thus, in the event a Party's exemption is lost or reduced, each Party's responsibility with respect to such Governmental Charge shall be in accordance with the first four sentences of this Section 13.1.

14. CONFIDENTIALITY; RELEASE OF INFORMATION

14.1. Confidentiality. The Parties hereto acknowledge and agree that this Agreement and any transactions entered into in connection herewith are subject to the provisions of the California Public Records Act (Cal. Government Code Section 6250 et seq.). In the event that Seller contends that any information disclosed or required to be disclosed by Seller pursuant to this Agreement is confidential, Seller shall clearly identify such documents as such before transmitting the same to Buyer. In the event that any claim or action is filed against Buyer pursuant to the Public Records Act seeking the disclosure of any records or documents provided by Seller which were marked confidential hereunder, Buyer shall notify Seller in writing of such fact and Seller shall thereupon defend, save harmless and indemnify Buyer from all costs and

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

expenses in connection with said claim or litigation, including attorney's fees, and agrees to abide by the final decision of a court of competent jurisdiction in connection therewith.

- 14.2. Release of Information. Seller authorizes Buyer to release to the FERC, CEC, the CPUC, or other Governmental Authority, information regarding the Facility, including Seller's name and location, and the size, location and operational characteristics of the Facility, the Term, the ERR type, photographs of the Project, the Commercial Operation Date, greenhouse gas emissions data and the net power rating of the Facility, as requested from time to time pursuant to the CEC's, CPUC's or applicable Governmental Authority's rules and regulations.

15. ASSIGNMENT

- 15.1. General Assignment. Except as provided in this Section, 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; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party, provided, however, that in each such case, 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. Notwithstanding anything to the contrary set forth herein, Seller may transfer or assign its interest under this Agreement without the consent of Buyer, to (a) an Affiliate of Seller, or a corporation, partnership or other legal entity wholly owned by Seller, or (b) a successor to Seller by purchase, merger, consolidation or reorganization (each such transfer a "Permitted Transfer" and any such assignee or transferee of a Permitted Transfer, a "Permitted Transferee"); provided that (i) the Permitted Transferee is of equal or greater creditworthiness than Seller, and (ii) Seller shall give Buyer Notice of the Permitted Transfer and any such Permitted Transferee shall agree in writing to be bound by the terms and conditions hereof.

- 15.2. Notice of Change of Control. Seller shall provide Buyer at least thirty (30) days' prior Notice of any Change of Control of Seller (whether voluntary or by operation of Law) and any such Change of Control will be deemed an assignment and require the prior written consent of Buyer, which consent shall not be unreasonably withheld.

16. GOVERNING LAW

- 16.1. 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.

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

17. DISPUTE RESOLUTION

17.1. Intent of the Parties. The sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Section 17, except that either Party may seek an injunction in Superior Court in San Diego, California if such action is necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the dispute by means of this procedure.

17.2. Management Negotiations.

17.2.1. The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's authorized representative, or such other person designated in writing as a representative of the Party (each, a "Manager"). Either Manager may request a meeting, to be held in person or telephonically, to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place.

17.2.2. All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed inadmissible as evidence such that it cannot be used or referred to in any subsequent judicial or arbitration process between the Parties, whether with respect to this dispute or any other.

17.2.3. If the matter is not resolved within forty-five (45) days of commencement of negotiations under Section 17.2.1, or if the Party receiving the written request to meet refuses or does not meet within the ten (10) Business Day period specified in Section 17.2.1, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

18. MISCELLANEOUS

18.1. Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

18.2. Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or PDF transmission will be deemed as effective as delivery of an originally executed counterpart. Each Party delivering an executed counterpart of this Agreement by facsimile or PDF transmission shall also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement shall not affect the validity or effectiveness of this Agreement.

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

- 18.3. General. No amendment to or modification of this Agreement shall be enforceable unless reduced to writing and executed by both Parties. 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. 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.
- 18.4. Interpretation. Whenever this Agreement specifically refers to any Law, tariff, Governmental Authority, regional reliability council, Transmission/Distribution Owner, or credit rating agency, the Parties hereby agree that the references also refers to any successor to such Law, tariff or organization.
- 18.5. Construction. The Agreement will not be construed against any Party as a result of the preparation, substitution, or other event of negotiation, drafting or execution thereof.
- 18.6. Joint Powers Authority. Seller hereby 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 its 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 against, and shall not make any claim, take any actions or assert any remedies against, any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, or any of Buyer’s retail customers in connection with this Agreement.
- 18.7. Mobile-Sierra. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party 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). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

[Signature page follows on next page.]

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below.

<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> (Seller)	<u>SAN DIEGO COMMUNITY POWER</u> (Buyer)
<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> (Signature)	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> (Signature)
<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> (Print Name)	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> (Print Name)
<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> (Title)	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> (Title)
<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> (Date)	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> (Date)

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

Appendix A - Definitions

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with that Party.

“AC” means alternating current.

“Application Fee” means the fee submitted by Seller to Buyer in the amount specified on the Cover Sheet at the time Seller submitted an application for a Feed-In Tariff Power Purchase Agreement. The Application Fee is non-refundable.

“Available Capacity” means the rated AC generating capacity of the Facility, expressed in whole kilowatts, that is available to generate Product.

“Bankrupt” means with respect to any entity, such entity that: (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, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days; (c) makes an assignment or any general arrangement for the benefit of creditors; (d) otherwise becomes bankrupt or insolvent (however evidenced); (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to such entity or any substantial portion of its property or assets; or (f) is generally unable to pay its debts as they fall due.

“Bonus Incentive” means an additional amount, as specified in the Cover Sheet, added to the Contract Price for the first five (5) Contract Years of the Delivery Term for Projects that meet any of the following criteria:

- (a) Local Business: The applicant and/or prime contractor must have a place of business (i.e., possesses a business license) physically headquartered within a member community of SDCP, as such membership exists on the date of submission of the FIT Application.
- (b) Previously Developed Sites: Such sites are defined as areas that either contain or have contained structures or were used for parking, loading or storage related to a previous or existing land use other than agricultural grazing or crop production within the last twenty (20) years. To claim this bonus, the previously developed land must make up at least twenty percent (20%) of the project footprint. Development documentation, in the form of building permits or verifiable ground, aerial, or satellite photography, as solely determined by Buyer, must be provided by Seller.
- (c) Sited within a Community of Concern: To qualify for the Sited within Communities of Concern incentive, the Eligible Resource must be located entirely within a Disadvantaged Community, as defined by the California Office of Environmental Health Hazard Assessment (<https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>), or within a very

FEED-IN TARIFF POWER PURCHASE AGREEMENT

low to low access census tract found in the City of San Diego's Climate Equity Index (<https://www.sandiego.gov/sustainability/social-equity-and-job-creation>), at the time of submission of the FIT Application. The geographical eligibility of Communities of Concern may expand as SDCP member cities enact their own Climate Equity Index designated census tracts.

"Business Day" means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday following Thanksgiving during the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party's principal place of business where the relevant Party in each instance shall be the Party from whom the notice, payment or delivery is being sent.

"CAISO" means the California Independent System Operator Corporation or any successor entity performing similar functions.

"CAISO Tariff" means the CAISO FERC Electric Tariff, Fifth Replacement Volume No. 1, as amended from time to time.

"California Renewables Portfolio Standard" or "RPS" means the renewable energy program and policies codified in California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions may be amended or supplemented from time to time.

"Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including, but not limited to, any accounting construct so that the full Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other such products.

"CEC" means the California Energy Commission or its successor agency.

"CEC Certification" means certification by the CEC that the Facility is an ERR and that all Energy produced by the Facility qualifies as generation from an ERR.

"CEC Pre-Certification" means provisional certification of the proposed Facility as an ERR by the CEC upon submission by a facility of a complete CEC-RPS-1B application and required supplemental information.

"Change of Control" means, except in connection with public market transactions of equity interests or capital stock of Seller's Parent, any circumstance in which Seller's Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Seller's Parent indirectly through one or more intermediate entities shall not be counted towards Seller's Parent's ownership interest in

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

Seller unless Seller's Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

For purposes of this definition, "Seller's Parent" means an entity which owns a majority of Seller's voting equity.

"Check Meter" means the Buyer revenue-quality meter section(s) or meter(s), which Buyer may require at its discretion, and which will include those devices normally supplied by Buyer or Seller under the applicable utility electric service requirements.

"Claiming Party" has the meaning set forth in Section 11.2.

"Collateral Requirement" has the meaning set forth in Section 3.9.

"Commercial Operation" means the Contract Capacity has been installed and the Facility is operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement.

"Commercial Operation Date" means the date on which the Facility achieves Commercial Operation.

"Commercial Operation Delay Damages" means an amount equal to \$0.20/kW per day.

"Contract Capacity" means the amount of electric energy generating capacity, set forth in the Cover Sheet, that Seller commits to install at the Site.

"Contract Price" has the meaning set forth in the Cover Sheet.

"Contract Quantity" has the meaning set forth in the Cover Sheet.

"Contract Year" means a period of twelve (12) consecutive months with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the anniversary of the Commercial Operation Date.

"Costs" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred either in terminating any arrangement pursuant to which it has hedged its obligations or in entering into new arrangements which replace the Transaction; and (b) all reasonable attorneys' fees and expenses incurred in connection with the termination of the Transaction.

"CPUC" means the California Public Utilities Commission, or successor entity.

"Credit Rating" means, with respect to any entity, (a) the rating then assigned to such entity's unsecured senior long-term debt obligations (not supported by third party credit enhancements), or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody's. If the entity is rated by both S&P and Moody's and such ratings are not equivalent, the lower of the

FEED-IN TARIFF POWER PURCHASE AGREEMENT

two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody's, but not both, then the available rating shall determine the Credit Rating.

"Cure Plan" has the meaning set forth in Section 12.2.2.3.

"Damage Payment" means the amount to be paid by Seller as the defaulting Party to Buyer as the non-defaulting Party after a termination of this Agreement prior to the Commercial Operation Date which shall be equal to the entire Development Security amount.

"Delivered Energy" means all Energy, expressed in kWh, produced by the Facility throughout the Delivery Term and delivered to the Delivery Point, net of Station Use and electrical losses from the Facility, as recorded by the meter specified in Section 6.2.1 or the Check Meter, as applicable.

"Delivery Point" has the meaning set forth in the Cover Sheet.

"Delivery Term" has the meaning set forth in the Cover Sheet.

"Development Security" means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

"Early Termination Date" has the meaning set forth in Section 12.3.

"Eligible Renewable Energy Resource" or "ERR" has the meaning set forth in Public Utilities Code Sections 399.12 and California Public Resources Code Section 25741, as either code provision may be amended or supplemented from time to time.

"Emergency" means (a) an actual or imminent condition or situation which jeopardizes the integrity of the electric system or the integrity of any other systems to which the electric system is connected or any condition so defined and declared by the CAISO; or (b) an emergency condition as defined under an Interconnection Agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply, that could adversely affect the reliability of the electric system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.

"Energy" means three-phase, 60-cycle alternating current electric energy measured in kWh, net of Station Use. For purposes of the definition of "Green Attributes," the word "energy" shall have the meaning set forth in this definition.

"Effective Date" means the latest signature date found at the end of the Agreement.

"Facility" has the meaning set forth in Section 2. The terms "Facility" or "Project" as used in this Agreement are interchangeable.

"FERC" means the Federal Energy Regulatory Commission or any successor government agency.

FEED-IN TARIFF POWER PURCHASE AGREEMENT

“FIT Application” means the Feed-in Tariff Application that each developer is required to submit through Buyer’s website.

“Force Majeure” means any occurrence that was not anticipated as of the Effective Date that:

(a) in whole or in part: (i) delays a Party’s performance under this Agreement; (ii) causes a Party to be unable to perform its obligations; or (iii) prevents a Party from complying with or satisfying the conditions of this Agreement;

(b) is not within the control of that Party; and

(c) the Party has been unable to overcome by the exercise of due diligence, including an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or curtailment or reduction in deliveries at the direction of a Transmission/Distribution Owner.

Force Majeure does not include:

(a) the lack of wind, sun or other fuel source of an inherently intermittent nature;

(b) reductions in generation from the Facility resulting from ordinary wear and tear, deferred maintenance or operator error; or

(c) any delay in providing, or cancellation of, interconnection service by a Transmission/Distribution Owner, except to the extent such delay or cancellation is the result of a force majeure claimed by the Transmission/Distribution Owner.

“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 the Transaction, determined in a commercially reasonable manner, subject to Section 12.5. Factors used in determining economic benefit may include, without limitation, 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, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

“Governmental Charges” has the meaning set forth in Section 13.1.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided

FEED-IN TARIFF POWER PURCHASE AGREEMENT

emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere¹; and (c) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production or investment tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

"Interconnection Agreement" means the small generator interconnection agreement entered into separately between Seller and Transmission/Distribution Owner obtained by Seller pursuant to Transmission/Distribution Owner's Wholesale Distribution Tariff.

"Interconnection Facilities" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with Seller's Interconnection Agreement.

"Interconnection Point" has the meaning set forth in the Cover Sheet.

"JAMS" means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

"Joint Powers Act" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

FEED-IN TARIFF POWER PURCHASE AGREEMENT

“Joint Powers Agreement” means that certain Joint Powers Agreement dated October 1, 2019, as amended by the First Amendment to the Joint Powers Agreement dated November 22, 2019, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kW” means kilowatt.

“kWh” means kilowatt-hour.

“Law” means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Effective Date, and which becomes effective during the Delivery Term; or any binding interpretation of the foregoing.

“Letter of Credit” means an irrevocable, non-transferable standby letter of credit issued either by a U.S. commercial bank or a foreign bank with a U.S. branch office with a Credit Rating of at least “A-” by S&P and “A3” by Moody’s (without a “credit watch”, “negative outlook” or other rating decline alert if its Credit Rating is “A-” by S&P or “A3” by Moody’s).

“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 the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 12.5. Factors used in determining the loss of economic benefit may include, without limitation, 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, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product.

“Manager” has the meaning set forth in Section 17.2.1.

“Moody’s” means Moody’s Investors Services, Inc., or its successor.

“MW” means megawatt (AC).

“MWh” means megawatt-hour.

“Notice” unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

“Party” means Buyer or Seller individually, and “Parties” means both collectively.

“Performance Security” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

FEED-IN TARIFF POWER PURCHASE AGREEMENT

“Permitted Transfer” has the meaning set forth in Section 15.1.

“Permitted Transferee” has the meaning set forth in Section 15.1.

“Product” means all Delivered Energy; all Green Attributes; all Capacity Attributes, if any; and all Resource Adequacy Benefits, if any; generated by, associated with, or attributable to the Facility throughout the Delivery Term.

“Project” has the meaning set forth in Section 2. The terms “Facility” and “Project” as used in this Agreement are interchangeable.

“Prudent Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy generating facilities in the Western United States, similar to the Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers’ warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO and Laws. Prudent Electrical Practices also includes taking reasonable steps to ensure that:

(a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Facility’s needs;

(b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Facility and Emergencies whether caused by events on or off the Site;

(c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(e) Equipment is not operated in a reckless manner, in violation of manufacturer’s guidelines or in a manner unsafe to workers, the general public, or the Transmission/Distribution Owner’s electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and

(f) Equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the Western United States and will function properly over the full range of ambient temperature

FEED-IN TARIFF POWER PURCHASE AGREEMENT

and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

“Renewable Energy Credit” has the meaning set forth in Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Reservation Deposit” means the deposit submitted by Seller to Buyer in the amount specified on the Cover Sheet at the time Buyer has accepted as complete Seller’s application for a Feed-In Tariff Power Purchase Agreement. Buyer shall return the Reservation Deposit to Seller upon receipt of the Development Security.

“Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Requirements” has the meaning set forth in Section 4.4.1.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time during the Delivery Term.

“Restricted Period” has the meaning set forth in Section 12.8.1.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“Settlement Amount” means the non-defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. 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 zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Site” means the real property on which the Facility is, or will be, located, as further described in Appendix D.

FEED-IN TARIFF POWER PURCHASE AGREEMENT

“Site Control” means Seller: (a) owns the Site, (b) leases the Site, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) prior to the Commercial Operation Date, has the unilaterally exercisable contractual right to acquire or cause to be acquired on its behalf any of (a), (b), or (c).

“Station Use” means energy consumed within the Facility’s electric energy distribution system as losses, as well as energy used to operate the Facility’s auxiliary equipment. The auxiliary equipment may include, but is not limited to, forced and induced draft fans, cooling towers, boiler feeds pumps, lubricating oil systems, plant lighting, fuel handling systems, control systems, and sump pumps. This use is not to exceed 1% of average annual output.

“Term” has the meaning set forth in Section 3.4.1.

“Termination Payment” has the meaning set forth in Section 12.5.1.

“Transaction” means the particular transaction described in Section 3.3.

“Transmission/Distribution Owner” means any entity or entities responsible for operating the electric distribution system or transmission system, as applicable, at and beyond the Interconnection Point.

“WECC” means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.

“WREGIS” means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard. *[for Facilities (1) 500 kW or greater and (2) eligible for a CAISO revenue meter.]*

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time. *[for Facilities (1) 500 kW or greater and (2) eligible for a CAISO revenue meter.]*

*** End of Appendix A ***

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

Appendix B – Commercial Operation Date Certificate

This certification (“**Certification**”) of Commercial Operation is delivered by Name of licensed professional engineer (“**Engineer**”) to San Diego Community Power, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Feed-In Tariff Power Purchase Agreement dated Agreement Effective Date] (“Agreement”) by and between Seller’s Name (“Seller”) and Buyer. All capitalized terms used in this Certificate but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of Date, Engineer hereby certifies and represents to Buyer the following:

1. The Facility is operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Contract Capacity.
3. The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Contract Capacity for the Facility at the Delivery Point, adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was Peak output in MW_{AC}.
4. *[If installing storage]* The Storage Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Output and is receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.
5. Authorization to parallel the Facility was obtained by the PTO, Name of Participating Transmission Owner as appropriate on Date of Authorization.
6. The PTO has provided documentation supporting full unrestricted release for Commercial Operation by Name of Participating Transmission Owner as appropriate on Date of release.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER] this Day day of Month, 20Year.

[LICENSED PROFESSIONAL ENGINEER]

X: _____

Title: _____

Date: _____

*** End of Appendix B ***

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

Appendix C – Forecasting Requirements

Seller shall provide the Available Capacity forecasts described below. *[The following bracketed language applies to As-Available solar or wind Projects only]* [Seller's availability forecasts below shall include Project availability and updated status of *[The following bracketed language applies to solar Projects only]* [photovoltaic panels, inverters, transformers, and any other equipment that may impact availability] or *[The following bracketed language applies to wind Projects only]* [transformers, wind turbine unit status, and any other equipment that may impact availability].] *[The following bracketed language applies to As-Available Product only]* Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Project accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary.

1. Annual Forecast of Available Capacity. No later than (a) the earlier of July 1 of the first calendar year following the Effective Date or one hundred and eighty (180) days before the first day of the first Contract Year of the Delivery Term ("First Annual Forecast Date"), and (b) on or before July 1 for each calendar year from the First Annual Forecast Date for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly Available Capacity for each day in each month of the following calendar year in a form reasonably acceptable to Buyer.

2. Monthly Forecast of Available Capacity. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

*** End of Appendix C ***

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

Appendix D – Description of the Facility

Seller should complete the information below and attach a description of the Facility, including a summary of its significant components, a drawing showing the general arrangements of the Facility, and a single line diagram illustrating the interconnection of the Facility and loads with Buyer's electric distribution system.

Name of the Facility: Insert Name of the Facility

Address of the Facility: Insert Street Address , City, State, ZIP

Description of the Facility, including a summary of its significant components, such as for solar photovoltaic [Photovoltaic Modules, DC Collection System, Current Inverters], meteorological station, instrumentation and any other related electrical equipment:

Drawing showing the general arrangement of the Facility:

A single-line diagram illustrating the interconnection of the Facility with Buyer:

A legal description of the Site, including a Site map:

Longitude and latitude of the centroid of the Site:

*** End of Appendix D ***

FEED-IN TARIFF POWER PURCHASE AGREEMENT

Appendix E – Seller’s Milestone Schedule

Action Steps	Time Allowance		Due On*	Date Completed	Responsible Party
STEP 1. Submit Application & Tendered Interconnection Agreement ¹				10/1/2021	Developer
1A. Submit Documentation in Support of Bonuses (if applicable)	Due with Initial Application				Developer
1B. Review Application for Eligibility & Assign FIT Record Number	20 BD	from Step 1	10/29/2021		SDCP
STEP 2. Approve Application	30 BD	from Step 1	11/12/2021		SDCP
STEP 3. Sign conditional PPA	30 BD	from Step 2	12/24/2021		Both
STEP 4. Submit Proof of Insurance	30 CD	from Step 3	1/23/2022		Developer
STEP 5. Acquire Full Interconnection Agreement	60 CD	from Step 3	2/22/2022		Developer
5A. Submit Interconnection Agreement to SDCP within 10 days of receipt	10 CD	from Step 5	3/4/2022		Developer
STEP 6. Pay Interconnection Fees & submit proof to SDCP	30 CD	from Step 5	3/24/2022		Developer
STEP 7. Submit confirmation of RPS request receipt by CEC and copy of CEC-RPS 1.	30 CD	from Step 5	3/24/2022		Developer
STEP 8. File project with WREGIS & submit proof to SDCP	30 CD	from Step 5	3/24/2022		Developer
STEP 9. Acquire conditional use & construction permits	180 CD	from Step 3	6/22/2022		Developer
9A. Submit proof of permits to SDCP	5 BD	from Step 9	6/29/2022		Developer
STEP 10. Notify SCP 10 business days in advance of ground breaking	10 BD	prior to ground breaking			Developer
STEP 11. Mechanical Completion	360 CD	from Step 9	6/17/2023		Developer
STEP 12. Notify SDCP 90 business days in advance of commercial operation	90 BD	prior to Step 13	4/12/2023		Developer
STEP 13. Start of Commercial Operation	60 CD	from Step 11	8/16/2023		Developer
STEP 14. Submit CEC Certification	90 CD	from Step 13	11/14/2023		Developer
* Please note that once FIT application is received and processed by San Diego Community Power the due dates become binding milestones. Missing due dates may be grounds for changing a project's queue position and/or contract termination.					
¹ For clarity, the tendered interconnection agreement is the final draft from SDG&E's Wholesale Interconnection Services prior to execution of that agreement.					
BD = Business Days, CD = Calendar Days					

*** End of Appendix E ***

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

Appendix F – Notices List

SELLER

Name: Seller's Name, a include place of formation and business type. ("Seller")

All Notices:

Delivery Address:

Street Address

City, State ZIP

Mail Address: *(if different from above)*

Street Address

City, State ZIP

Attn: Contract Manager's Name.

Phone: Phone Number

Facsimile: Fax Number

D-U-N-S: D-U-N-S

Federal Tax ID Number:

Federal Tax ID Number

Invoices:

Attn: Invoice Contact Person

Phone: Phone Number

Facsimile: Fax Number

Payments:

Attn: Payments Contact Person

Phone: Phone Number

Facsimile: Fax Number

Wire Transfer:

BNK: Name of Bank

ABA: ABA Routing Number

ACCT: Account Number

Credit and Collections:

Attn: Credit/Collect. Contact Person

Phone: Phone Number

Facsimile: Fax Number

**With additional Notices of an Event of
Default to Contract Manager:**

Attn: Contract Manager Name

Phone: Phone Number

BUYER

Name: **SAN DIEGO COMMUNITY POWER**, a California joint powers authority ("Buyer" or "SDCP")

All Notices:

Delivery Address:

815 E Street, Suite 12716

San Diego, CA 92112

Mail Address:

815 E Street, Suite 12716

San Diego, CA 92112

Attn:

Phone:

Facsimile:

DUNS:

Federal Tax ID Number:

Invoices:

Attn:

Phone:

Facsimile:

Payments:

Attn:

Phone:

Facsimile:

Wire Transfer:

BNK:

ABA:

ACCT:

Credit and Collections:

Attn:

Phone:

Facsimile:

SDCP Contract Manager:

Attn:

Phone:

**FEED-IN TARIFF
POWER PURCHASE AGREEMENT**

Facsimile: Fax Number

**** End of Appendix F****



SAN DIEGO COMMUNITY POWER Staff Report – Item 16

To: San Diego Community Power Board of Directors

From: Cody Hooven, Chief Operating Officer
Lucas Utouh, Director of Data Analytics and Account Services

Via: Bill Carnahan, Interim Chief Executive Officer

Subject: Update on 2022 Rate/Power Charge Indifference Adjustment (PCIA)
Projected Changes

Date: December 16, 2021

RECOMMENDATION

Receive and file 2022 rates and provide direction to staff.

BACKGROUND

As San Diego Community Power (SDCP) continues to assess a potential rate adjustment for the upcoming year and in advance of its Phase 3 enrollment, it is critical to understand current and projected SDG&E rates and changes to the Power Charge Indifference Adjustment (PCIA) – as both SDG&E bundled rates and PCIA play a role in the SDCP rate setting process. SDG&E last adjusted their rates on November 1, 2021 and is expected to adjust rates again on January 1, 2021.

ANALYSIS AND DISCUSSION

Rate Setting Process

SDCP will establish rates sufficient to recover all costs related to operations of our program and the Board of Directors has the ultimate responsibility for setting the electric generation rates for SDCP's customers. The Interim Chief Executive Officer in cooperation with Staff and appropriate advisors, consultants and committees of the Board is responsible for developing proposed rates for the Board to consider before finalization. In order for SDCP to be fiscally sustainable, the final approved rates should, at a minimum, meet the annual revenue requirements developed by SDCP, including any reserves or coverage requirements set forth in policy and/or loan covenants/debt service. The Board has the flexibility to consider rate adjustments, provided that the overall revenue requirement is achieved.

As part of the rate setting process, SDCP considers the following key factors:

- Power costs
- Operational costs
- Credit/bank obligations and debt service
- Reserve requirements
- Customer value
- Competitiveness to SDG&E

Additionally, per previous Board direction, SDCP staff will, if possible, recommend rates that remain competitive with SDG&E service. For example, the Board approved a 1% discount for our customers with a planned reserve margin of at least 5% yield for our rates effective as of 6/1/2021.

Its important to note rates are made up of several components, only one of which SDCP has control over i.e. SDCP's generation rate. The chart below is an example of current rates for one rate class to illustrate the various components that affect rates and make up a total customer bill. We track the changes to the PCIA as it is the above market cost of power associated with SDG&E's portfolio that both SDG&E's bundled customers pay as well as SDCP customers who have departed SDG&E commodity service and can affect SDCP's overall headroom, or competitiveness. Above market refers to expenditures for generation resources that cannot be fully recovered through sales of these resources at current market prices.

Time-of-Use – TOU-A - Commercial (Secondary Voltage)

Commercial: TOU-A	SDG&E	SDG&E EcoChoice	SDCP PowerOn	SDCP Power100
	31% Renewable	100% Renewable	50% Renewable + 5% Carbon Free	100% Renewable
Generation Rate (\$/kWh)	\$0.06679	\$0.11746	\$0.07087	\$0.07836
SDG&E Delivery Rate (\$/kWh)	\$0.18417	\$0.18417	\$0.18417	\$0.18417
SDG&E PCIA (\$/kWh)	\$0.03796	\$0.03796	\$0.03166	\$0.03166
Franchise Fees (\$/%)	\$0.00319	\$0.00333	\$0.00277	\$0.00277
Total Electricity Cost (\$/kWh)	\$0.29211	\$0.34293	\$0.28947	\$0.29697
Average Monthly Bill (\$)	\$391.14	\$459.18	\$387.60	\$397.64

Average Monthly Usage: 1,339 kWh
Average Monthly Demand: 6.7 kW

Rates current as of November 1, 2021

2021 – 2022 Rates Timeline

San Diego Community Power, like most Community Choice Aggregators, usually adjusts rates annually or in response to utility rate adjustments. There is a very narrow window of time between when SDG&E sets their 2022 rates and when SDCP needs updated rates available for 2022 Phase 3 customer enrollment. Since launching our municipal service in March of 2021, SDCP has only adjusted rates once in advance of its Phase 2 enrollment in June 2021. SDG&E, by comparison, also adjusted rates in June 2021, and then again in November 2021.

The expected schedule for both SDG&E and SDCP until our Phase 3 launch in February 2022 is as follows:

- November 2021; SDG&E's 2022 Energy Resource Recovery Account (ERRA) forecast application filed.
- December 2021; SDG&E's 2021 Energy Resource Recovery Account (ERRA) Trigger balance decision expected from CPUC.
- January 1, 2022; SDG&E's expected implementation of its generation rates and the PCIA.
- January 13, 2022; SDCP Board adopts 2022 Rates.
- February 1, 2022; SDCP rates become effective.

2022 Bundled Rate/PCIA Projections

Based on SDG&E's 2022 Energy Resource Recovery Account (ERRA) forecast application, their projected bundled system average rates are expected to increase by approximately 8%-10% across all rate classes as of 1/1/2022. This translates to an increase of approximately 14%-18% to the underlying SDG&E's commodity rates. These projections as articulated in the chart below do not factor in the under-collection of \$148MM associated with SDG&E's 2021 Energy Resource Recovery Account (ERRA) trigger which could exert upwards pressure on both PCIA and bundled commodity rates:

Rate Group	SDG&E Bundled Commodity Rates			
	Current Effective	Projected As of 1/1/2022	Difference	
	(c/kWh)	(c/kWh)	(c/kWh)	%
Residential	12.35	13.39	1.04	8.40%
Small Commercial	10.73	11.83	1.1	10.30%
Medium & Large C&I	12.64	13.71	1.07	8.50%
Agriculture	8.81	9.54	0.74	8.40%
Streetlighting	8.1	8.77	0.68	8.30%
System Total	12.03	13.12	1.09	9.10%

SDG&E attributes the increasing electric generation energy costs in 2022 to rising natural gas prices among various other things, along with the aforementioned under-collection in 2021 as the driving factors for the projected rate increase.

Based on our high-level forecasts, we are expecting to see an approximately ~27% reduction in PCIA for Vintage 2020 (Phase 1 & 2 customers), and ~72% reduction for Vintage 2021 (Phase 3 customers) as depicted in the chart below.



SDG&E PCIA Rates								
Rate Group	Current		Proposed		Difference		% Difference	
	PCIA	PCIA	PCIA	PCIA	PCIA	PCIA	PCIA	PCIA
	2020	2021	2020	2021	2020	2021	2020	2021
	Vintage	Vintage	Vintage	Vintage	Vintage	Vintage	Vintage	Vintage
Residential	0.03770	0.04520	0.0276	0.0160	-0.0101	-0.0292	-26.79%	-65%
Small Commercial	0.03170	0.03800	0.0232	0.0080	-0.0084	-0.03	-26.81%	-79%
Medium & Large C&I	0.03510	0.04280	0.0257	0.0075	-0.0094	-0.0352	-26.78%	-82%
Agriculture	0.02640	0.03180	0.0192	0.0098	-0.0073	-0.022	-27.27%	-69%
Streetlighting	0.02480	0.02970	0.0175	0.0087	-0.0072	-0.021	-29.44%	-71%
System Total	0.0354	0.0427	0.0258	0.012	-0.0096	-0.0307	-27.12%	-71.90%

The primary driver for the substantial decrease in the PCIA is historically high energy market forward prices in 2022 which reduce the above market cost of SDG&E's portfolio.

If approved by the CPUC before this year ends, SDGE's projected rate increases and PCIA reductions expected to be effective as of 1/1/2022 will improve SDCP's competitiveness versus SDG&E in 2022 and allow for SDCP to maintain and/or enhance the value proposition (i.e., discount) offered.

2022 Rate Setting Mechanics

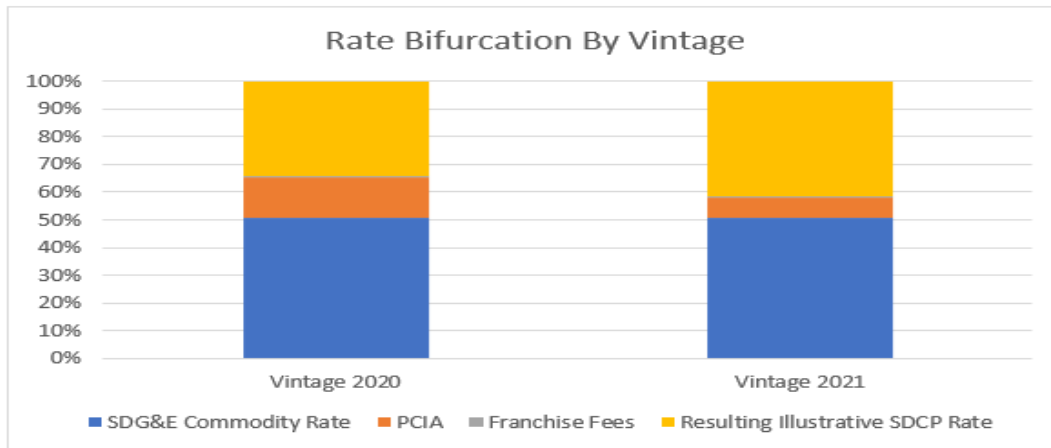
In accordance with SDG&E's definition of load transfer from bundled service to SDCP's service per Schedule CCA-CRS, our Phase 1 and 2 customers' Vintage Year is 2020 and our Phase 3 customers' Vintage Year is 2021. Vintaging denotes the year during which SDG&E recognizes the transition of our customers from bundled service into our service and creates a mechanism for the assessment of PCIA.

Next Steps

SDCP is enrolling Phase 3 customers beginning in February 2022, with outreach beginning prior to that. Staff will continue to monitor all updates from SDG&E/CPUC throughout the remainder of the year and into 2022 to be able to better analyze and recommend rate changes that are reflective of all of the inputs articulated in CPUC's decision(s). We expect to present rates to the SDCP Board for adoption at a January 2022 meeting that both meet the revenue and prudent reserve needs of SDCP as well as maintain value for our customers.

As a result of the substantial deltas expected between PCIA for Vintage Year 2020 and 2021, Staff will also recommend to the Board bifurcating two sets of rates for 2022 during the next Board meeting. This bifurcation will maintain a fair, equitable and balanced rate structure that doesn't create winners and losers across our customers with differing vintage years as articulated below:





*Illustrative Schedule LS; the most common and simplest lighting rate

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A



GLOSSARY OF TERMS

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.

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.

CEC – California Energy Commission

CPUC – California Public Utility Commission

C&I – Commercial and Industrial – Business customers

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.

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

DASR – Direct Access Service Request – Request submitted by C&I 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. SVCE settles its CAISO load at the PG&E DLAP as SVCE is in the PG&E transmission access charge area.

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.

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

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.

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

EV – Electric Vehicle

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.

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.

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.



IOU – Investor-Owned Utility – A private electricity and natural gas provider.

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.

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.

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.

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

NRDC – Natural Resources Defense Council

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.

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

MWH – Megawatt-hour – measure of energy

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.

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 process 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.

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.

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.

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.

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.

SCE – Southern California Edison

SDG&E – San Diego Gas & Electric

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.)

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.

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, midpeak, 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.

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.

